

HOUSE BILL NO. 303

INTRODUCED BY D. KOTTEL

A BILL FOR AN ACT ENTITLED: "AN ACT REPLACING THE MONTANA LIMITED LIABILITY COMPANY ACT WITH THE REVISED UNIFORM LIMITED LIABILITY COMPANY ACT; AMENDING SECTIONS 15-30-101, 35-8-101, 35-8-102, 35-8-103, 35-8-104, 35-8-106, 35-8-107, 35-8-109, 35-8-110, 35-8-111, 35-8-202, 35-8-203, 35-8-204, 35-8-208, 35-8-215, 35-8-216, 35-8-217, 35-8-218, 35-8-219, 35-8-301, 35-8-304, 35-8-307, 35-8-310, 35-8-501, 35-8-502, 35-8-604, 35-8-605, 35-8-703, 35-8-803, 35-8-804, 35-8-805, 35-8-901, 35-8-908, 35-8-909, 35-8-912, 35-8-913, 35-8-1104, 35-8-1201, 35-8-1202, 35-8-1203, 35-8-1210, AND 35-8-1211, MCA; REPEALING SECTIONS 35-8-108, 35-8-201, 35-8-205, 35-8-209, 35-8-210, 35-8-302, 35-8-306, 35-8-405, 35-8-410, 35-8-411, 35-8-503, 35-8-504, 35-8-601, 35-8-603, 35-8-606, 35-8-701, 35-8-702, 35-8-705, 35-8-707, 35-8-808, 35-8-809, 35-8-811, 35-8-812, 35-8-902, 35-8-903, 35-8-904, 35-8-905, 35-8-906, 35-8-1001, 35-8-1002, 35-8-1003, 35-8-1007, 35-8-1008, 35-8-1009, 35-8-1010, 35-8-1011, 35-8-1012, 35-8-1013, 35-8-1014, 35-8-1101, 35-8-1205, 35-8-1301, 35-8-1302, 35-8-1303, 35-8-1304, 35-8-1305, 35-8-1306, AND 35-8-1307, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 15-30-101, MCA, is amended to read:

"15-30-101. Definitions. For the purpose of this chapter, unless otherwise required by the context, the following definitions apply:

(1) "Base year structure" means the following elements of the income tax structure:

(a) the tax brackets established in 15-30-103, but unadjusted by 15-30-103(2), in effect on June 30 of the taxable year;

(b) the exemptions contained in 15-30-112, but unadjusted by 15-30-112(6), in effect on June 30 of the taxable year;

(c) the maximum standard deduction provided in 15-30-122, but unadjusted by 15-30-122(2), in effect on June 30 of the taxable year.

(2) "Consumer price index" means the consumer price index, United States city average, for all items, for all urban consumers (CPI-U), using the 1982-84 base of 100, as published by the bureau of labor statistics

1 of the U.S. department of labor.

2 (3) "Corporation" or "C. corporation" means a corporation, limited liability company, or other entity:

3 (a) that is treated as an association for federal income tax purposes;

4 (b) for which a valid election under section 1362 of the Internal Revenue Code (26 U.S.C. 1362) is not
5 in effect; and

6 (c) that is not a disregarded entity.

7 (4) "Department" means the department of revenue.

8 (5) "Disregarded entity" means a business entity:

9 (a) that is disregarded as an entity separate from its owner for federal tax purposes, as provided in
10 United States treasury regulations 301.7701-2 or 301.7701-3, 26 CFR 301.7701-2 or 26 CFR 301.7701-3, or as
11 those regulations may be labeled or amended; or

12 (b) that is a qualified subchapter S. subsidiary that is not treated as a separate corporation, as provided
13 in section 1361(b)(3) of the Internal Revenue Code (26 U.S.C. 1361(b)(3)).

14 (6) "Dividend" means:

15 (a) any distribution made by a C. corporation out of its earnings and profits to its shareholders or
16 members, whether in cash or in other property or in stock of the corporation, other than stock dividends; and

17 (b) any distribution made by an S. corporation treated as a dividend for federal income tax purposes.

18 (7) "Fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any person,
19 whether individual or corporate, acting in any fiduciary capacity for any person, trust, or estate.

20 (8) "Foreign C. corporation" means a corporation that is not engaged in or doing business in Montana,
21 as provided in 15-31-101.

22 (9) "Foreign government" means any jurisdiction other than the one embraced within the United States,
23 its territories, and its possessions.

24 (10) "Gross income" means the taxpayer's gross income for federal income tax purposes as defined in
25 section 61 of the Internal Revenue Code (26 U.S.C. 61) or as that section may be labeled or amended, excluding
26 unemployment compensation included in federal gross income under the provisions of section 85 of the Internal
27 Revenue Code (26 U.S.C. 85) as amended.

28 (11) "Inflation factor" means a number determined for each tax year by dividing the consumer price index
29 for June of the tax year by the consumer price index for June 2005.

30 (12) "Information agents" includes all individuals and entities acting in whatever capacity, including

1 lessees or mortgagors of real or personal property, fiduciaries, brokers, real estate brokers, employers, and all
2 officers and employees of the state or of any municipal corporation or political subdivision of the state, having the
3 control, receipt, custody, disposal, or payment of interest, rent, salaries, wages, premiums, annuities,
4 compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits,
5 and income with respect to which any person or fiduciary is taxable under this chapter.

6 (13) "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended, or as it may be
7 labeled or further amended. References to specific provisions of the Internal Revenue Code mean those
8 provisions as they may be otherwise labeled or further amended.

9 (14) "Knowingly" is as defined in 45-2-101.

10 (15) "Limited liability company" means a limited liability company, ~~domestic limited liability company~~, or
11 a foreign limited liability company as defined in 35-8-102.

12 (16) "Limited liability partnership" means a limited liability partnership as defined in 35-10-102.

13 (17) "Lottery winnings" means income paid either in lump sum or in periodic payments to:

14 (a) a resident taxpayer on a lottery ticket; or

15 (b) a nonresident taxpayer on a lottery ticket purchased in Montana.

16 (18) (a) "Montana source income" means:

17 (i) wages, salary, tips, and other compensation for services performed in the state or while a resident
18 of the state;

19 (ii) gain attributable to the sale or other transfer of tangible property located in the state, sold or otherwise
20 transferred while a resident of the state, or used or held in connection with a trade, business, or occupation
21 carried on in the state;

22 (iii) gain attributable to the sale or other transfer of intangible property received or accrued while a
23 resident of the state;

24 (iv) interest received or accrued while a resident of the state or from an installment sale of real property
25 or tangible commercial or business personal property located in the state;

26 (v) dividends received or accrued while a resident of the state;

27 (vi) net income or loss derived from a trade, business, profession, or occupation carried on in the state
28 or while a resident of the state;

29 (vii) net income or loss derived from farming activities carried on in the state or while a resident of the
30 state;

(viii) net rents from real property and tangible personal property located in the state or received or accrued while a resident of the state;

(ix) net royalties from real property and from tangible real property to the extent the property is used in the state or the net royalties are received or accrued while a resident of the state. The extent of use in the state is determined by multiplying the royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the royalty period in the tax year and the denominator of which is the number of days of physical location of the property everywhere during all royalty periods in the tax year. If the physical location is unknown or unascertainable by the taxpayer, the property is considered used in the state in which it was located at the time the person paying the royalty obtained possession.

(x) patent royalties to the extent the person paying them employs the patent in production, fabrication, manufacturing, or other processing in the state, a patented product is produced in the state, or the royalties are received or accrued while a resident of the state;

(xi) net copyright royalties to the extent printing or other publication originates in the state or the royalties are received or accrued while a resident of the state;

(xii) partnership income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit:

(A) derived from a trade, business, occupation, or profession carried on in the state;

(B) derived from the sale or other transfer or the rental, lease, or other commercial exploitation of property located in the state; or

(C) taken into account while a resident of the state;

(xiii) an S. corporation's separately and nonseparately stated income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit:

(A) derived from a trade, business, occupation, or profession carried on in the state;

(B) derived from the sale or other transfer or the rental, lease, or other commercial exploitation of property located in the state; or

(C) taken into account while a resident of the state;

(xiv) social security benefits received or accrued while a resident of the state;

(xv) taxable individual retirement account distributions, annuities, pensions, and other retirement benefits received while a resident of the state; and

(xvi) any other income attributable to the state, including but not limited to lottery winnings, state and federal tax refunds, nonemployee compensation, recapture of tax benefits, and capital loss addbacks.

1 (b) The term does not include:

2 (i) compensation for military service of members of the armed services of the United States who are not
3 Montana residents and who are residing in Montana solely by reason of compliance with military orders and does
4 not include income derived from their personal property located in the state except with respect to personal
5 property used in or arising from a trade or business carried on in Montana; or

6 (ii) interest paid on loans held by out-of-state financial institutions recognized as such in the state of their
7 domicile, secured by mortgages, trust indentures, or other security interests on real or personal property located
8 in the state, if the loan is originated by a lender doing business in Montana and assigned out-of-state and there
9 is no activity conducted by the out-of-state lender in Montana except periodic inspection of the security.

10 (19) "Net income" means the adjusted gross income of a taxpayer less the deductions allowed by this
11 chapter.

12 (20) "Nonresident" means a natural person who is not a resident.

13 (21) "Paid", for the purposes of the deductions and credits under this chapter, means paid or accrued
14 or paid or incurred, and the terms "paid or accrued" and "paid or incurred" must be construed according to the
15 method of accounting upon the basis of which the taxable income is computed under this chapter.

16 (22) "Partner" means a member of a partnership or a manager or member of any other entity, if treated
17 as a partner for federal income tax purposes.

18 (23) "Partnership" means a general or limited partnership, limited liability partnership, limited liability
19 company, or other entity, if treated as a partnership for federal income tax purposes.

20 (24) "Pass-through entity" means a partnership, an S. corporation, or a disregarded entity.

21 (25) "Pension and annuity income" means:

22 (a) systematic payments of a definitely determinable amount from a qualified pension plan, as that term
23 is used in section 401 of the Internal Revenue Code (26 U.S.C. 401), or systematic payments received as the
24 result of contributions made to a qualified pension plan that are paid to the recipient or recipient's beneficiary upon
25 the cessation of employment;

26 (b) payments received as the result of past service and cessation of employment in the uniformed
27 services of the United States;

28 (c) lump-sum distributions from pension or profit-sharing plans to the extent that the distributions are
29 included in federal adjusted gross income;

30 (d) distributions from individual retirement, deferred compensation, and self-employed retirement plans

1 recognized under sections 401 through 408 of the Internal Revenue Code (26 U.S.C. 401 through 408) to the
2 extent that the distributions are not considered to be premature distributions for federal income tax purposes; or

3 (e) amounts received from fully matured, privately purchased annuity contracts after cessation of regular
4 employment.

5 (26) "Purposely" is as defined in 45-2-101.

6 (27) "Received", for the purpose of computation of taxable income under this chapter, means received
7 or accrued, and the term "received or accrued" must be construed according to the method of accounting upon
8 the basis of which the taxable income is computed under this chapter.

9 (28) "Resident" applies only to natural persons and includes, for the purpose of determining liability to
10 the tax imposed by this chapter with reference to the income of any taxable year, any person domiciled in the
11 state of Montana and any other person who maintains a permanent place of abode within the state even though
12 temporarily absent from the state and who has not established a residence elsewhere.

13 (29) "S. corporation" means an incorporated entity for which a valid election under section 1362 of the
14 Internal Revenue Code (26 U.S.C. 1362) is in effect.

15 (30) "Stock dividends" means new stock issued, for surplus or profits capitalized, to shareholders in
16 proportion to their previous holdings.

17 (31) "Tax year" means the taxpayer's taxable year for federal income tax purposes.

18 (32) "Taxable income" means the adjusted gross income of a taxpayer less the deductions and
19 exemptions provided for in this chapter.

20 (33) "Taxpayer" includes any person, entity, or fiduciary, resident or nonresident, subject to a tax or other
21 obligation imposed by this chapter and unless otherwise specifically provided does not include a C. corporation."

22
23 **Section 2.** Section 35-8-101, MCA, is amended to read:

24 **"35-8-101. Short title.** This chapter may be cited as the "~~Montana~~ Revised Uniform Limited Liability
25 Company Act"."

26
27 **Section 3.** Section 35-8-102, MCA, is amended to read:

28 **"35-8-102. Definitions.** As used in this chapter, unless the context requires otherwise, the following
29 definitions apply:

30 (1) ~~"Articles of organization"~~ "Certificate of organization" means ~~articles filed pursuant to the certificate~~

~~required by 35-8-201, and those articles~~ The term includes the certificate as amended or restated. In the case of a foreign limited liability company, the term includes all records serving a similar function required to be filed under the laws of the state or country where it is organized.

~~(2) "At-will company" means a limited liability company other than a term company.~~

~~—— (3) "Authorized agent" means any individual granted permission by an entity to execute a document on behalf of the entity. The entity is responsible for maintaining a record of the permission granted to an authorized agent.~~

~~—— (4) "Business" includes every trade, occupation, profession, or other lawful purpose, whether or not carried on for profit.~~

~~—— (5) "Corporation" means a corporation formed under the laws of this state or a foreign corporation.~~

~~—— (6) "Court" includes every court having jurisdiction in the case.~~

(2) "Contribution" means any benefit provided by a person to a limited liability company:

(a) in order to become a member upon formation of the company and in accordance with an agreement between or among the persons that have agreed to become the initial members of the company;

(b) in order to become a member after formation of the company and in accordance with an agreement between the person and the company; or

(c) in the person's capacity as a member and in accordance with the operating agreement or an agreement between the member and the company.

~~(7)(3) "Debtor in bankruptcy" means a person who that is the subject of:~~

(a) an order for relief under Title 11 of the United States Code or a successor statute of general application; or

(b) a comparable order under federal, state, or foreign law governing insolvency.

~~(8) "Disqualified person" means any person or entity that for any reason is or becomes ineligible under this chapter to become a member in a professional limited liability company.~~

(4) "Designated office" means:

(a) the address that a limited liability company is required to designate and maintain under Title 35, chapter 7; or

(b) the principal office of a foreign limited liability company.

~~(9)(5) "Distribution", except as provided in 35-8-604(7), means a transfer of money; or other property; or other benefit to a member in that member's capacity as a member of from a limited liability company or to a~~

transferee of a member's distributional another person on account of a transferable interest.

~~(10) "Distributional interest" means all of a member's interest in the distributions of a limited liability company.~~

~~—— (11) "Event of dissociation" means an event that causes a person to cease to be a member.~~

~~—— (12) "Foreign corporation" means a corporation that is organized under the laws of a state other than Montana or under the laws of any foreign country.~~

(6) "Effective", with respect to a record required or permitted to be delivered to the secretary of state for filing under this chapter, means effective under [section 17(3)].

~~(13)(7) "Foreign limited liability company" means an entity that is:~~

~~—— (a) an unincorporated entity;~~

~~—— (b) organized formed under laws the law of a state a jurisdiction other than Montana this state or under the laws of any foreign country;~~

~~—— (c) organized under a statute pursuant to which an entity may be formed that affords to each of its members limited liability with respect to the liabilities of the entity; and~~

~~—— (d) not required to be registered or organized under any statute of this state other than this chapter and denominated by that law as a limited liability company.~~

~~(14) "Foreign limited partnership" means a limited partnership formed under the laws of any state other than Montana or under the laws of any foreign country.~~

~~—— (15) "Foreign professional limited liability company" means a limited liability company organized for the purpose of rendering professional services under the laws of any state other than Montana.~~

~~—— (16) "Licensing authority" means an officer, board, agency, court, or other authority in this state that has the power to issue a license or other legal authorization to render a professional service.~~

~~(17)(8) "Limited liability company", or "domestic limited liability company" except in the phrase "foreign limited liability company", means an organization that is entity formed under this chapter.~~

~~(18) "Limited partnership" means a limited partnership formed under the laws of this state or a foreign limited partnership.~~

~~(19)(9) "Manager" means a person who, whether or not a member that under the operating agreement of a manager-managed limited liability company; is vested with authority under 35-8-304 responsible, alone or in concert with others, for performing the management functions stated in 35-8-307(3).~~

~~(20)(10) "Manager-managed limited liability company" means a limited liability company that is so~~

designated in its articles of organization qualifies under 35-8-307(1).

~~(21)(11)~~ "Member" means a person ~~who has been admitted to membership in that~~ has become a member
of a limited liability company, ~~as provided in 35-8-703, under [section 32]~~ and who has not dissociated from the
~~limited liability company under 35-8-803.~~

~~(22)(12)~~ "Member-managed limited liability company" means a limited liability company ~~other than that~~
is not a manager-managed limited liability company.

~~(23)(13)~~ "Operating agreement" means ~~an the~~ the agreement, ~~including amendments, as to the conduct of~~
~~the business and affairs of a limited liability company and the relations among the members, managers, and the~~
~~company that is binding upon all of the members~~ whether or not referred to as an operating agreement and
whether oral, in a record, implied, or in any combination thereof, of all the members of a limited liability company,
including a sole member, concerning the matters described in 35-8-109(1). The term includes the agreement as
amended or restated.

(14) "Organizer" means a person that acts under 35-8-202 to form a limited liability company.

~~(24)(15)~~ "Person" means an individual, a corporation, a business trust, a general partnership, a limited
partnership, a domestic or foreign limited liability company, a trust, an estate, an association, a joint venture, a
public corporation, a government or governmental subdivision, agency, or instrumentality, or any other legal or
commercial entity.

~~(25) "Professional limited liability company" means a limited liability company designating itself as a~~
~~professional limited liability company in its articles of organization.~~

~~—— (26) "Professional service" means a service that may lawfully be rendered only by persons licensed under~~
~~a licensing law of this state and that may not be lawfully rendered by a limited liability company that is not a~~
~~professional limited liability company.~~

~~—— (27) "Qualified person" means a natural person, limited liability company, general partnership, or~~
~~professional corporation eligible under this chapter to own shares issued by a professional limited liability~~
~~company.~~

(16) "Principal office" means the principal executive office of a limited liability company or foreign limited
liability company, whether or not the office is located in this state.

~~(28)(17)~~ "Record" means information that is inscribed on a tangible medium or that is stored in an
electronic or other medium and is recoverable in a perceivable form.

~~(29)(18)~~ "Sign" means, with the present intent to authenticate or adopt a record: to identify a record by

means of a signature, mark, or other symbol with the intent to authenticate it

(a) to execute or adopt a tangible symbol; or

(b) to attach to or logically associate with the record an electronic symbol, sound, or process.

~~(30)~~(19) "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

~~(31)~~ "Surviving limited liability company" means the constituent entity surviving the merger, as identified in the articles of merger provided for in 35-8-1201.

~~(32)~~ "Term company" means a limited liability company designated as a term company in its articles of organization.

(20) "Transfer" includes an assignment, conveyance, deed, bill of sale, lease, mortgage, security interest, encumbrance, gift, and transfer by operation of law.

(21) "Transferable interest" means the right, as originally associated with a person's capacity as a member, to receive distributions from a limited liability company in accordance with the operating agreement, whether or not the person remains a member or continues to own any part of the right.

(22) "Transferee" means a person to which all or part of a transferable interest has been transferred, whether or not the transferor is a member."

Section 4. Section 35-8-103, MCA, is amended to read:

"35-8-103. Name. (1) ~~(a)~~ The name of ~~each a~~ limited liability company ~~as set forth in its articles of organization~~ must contain the words "limited liability company" or "limited company" or the abbreviations "l.l.c.", "l.c.", "llc", or "lc". The word "limited" may be abbreviated as "ltd.", and the word "company" may be abbreviated as "co.".

~~(b) The name of a limited liability company as set forth in its articles of organization may not contain business name identifiers, as defined in 30-13-201, or other language that states or implies that the limited liability company is a business other than a limited liability company.~~

(2) ~~A~~ Unless authorized by subsection (3), the name of a limited liability company name must be distinguishable ~~on~~ in the records of the secretary of state from:

(a) the name of ~~any business corporation, nonprofit corporation, limited partnership, or limited liability company~~ each person that is not an individual and that is incorporated, organized, or reserved under the laws

1 ~~of authorized to transact business in~~ this state;

2 ~~(b) the name of any foreign business corporation, foreign nonprofit corporation, foreign limited~~
3 ~~partnership, or foreign limited liability company registered or qualified to do business in this state~~ name stated
4 in each certificate of organization that contains the statement as provided in 35-8-202(2)(c) and that has not
5 lapsed; and

6 ~~(c) any assumed business~~ each name, limited partnership name, trademark, service mark, or other name
7 registered or reserved with the secretary of state; and

8 ~~—— (d) the corporate name of a domestic corporation that has dissolved but only for a period of 120 days~~
9 after the effective date of its dissolution reserved under Title 30, chapter 13, part 2, and 35-8-104.

10 ~~(3) The use of the name of a limited liability company by another limited liability company or limited~~
11 ~~partnership is governed by 35-1-308.~~

12 ~~—— (4) Contests over names registered under this section are governed by 35-1-310.~~

13 (3) A limited liability company may apply to the secretary of state for authorization to use a name that
14 does not comply with subsection (2). The secretary of state shall authorize use of the name applied for if, as to
15 each noncomplying name:

16 (a) the present user, registrant, or owner of the noncomplying name consents in a signed record to the
17 use and submits an undertaking in a form satisfactory to the secretary of state to change the noncomplying name
18 to a name that complies with subsection (2) and is distinguishable in the records of the secretary of state from
19 the name applied for; or

20 (b) the applicant delivers to the secretary of state a certified copy of the final judgment of a court
21 establishing the applicant's right to use in this state the name applied for.

22 (4) Subject to [section 57], this section applies to a foreign limited liability company transacting business
23 in this state that has a certificate of authority to transact business in this state or that has applied for a certificate
24 of authority."

25
26 **Section 5.** Section 35-8-104, MCA, is amended to read:

27 **"35-8-104. Reservation of name.** (1) ~~The~~ A person may reserve the exclusive right to use ~~a~~ the name
28 ~~may be reserved by:~~

29 ~~—— (a) a person intending to organize~~ of a limited liability company, ~~and to adopt that name;~~

30 ~~—— (b) a limited liability company or foreign limited liability company registered in this state that intends to~~

1 ~~adopt that name;~~

2 ~~—— (c) including a fictitious or assumed name for a foreign limited liability company intending to register in~~
3 ~~this state and to adopt that name; or~~

4 ~~—— (d) a person intending to organize a foreign limited liability company and to have it registered in this state~~
5 ~~and to adopt that whose name is not available, by delivering an application to the secretary of state for filing. The~~
6 ~~application must state the name and address of the applicant and the name proposed to be reserved. If the~~
7 ~~secretary of state finds that the name applied for is available, it must be reserved for the applicant's exclusive use~~
8 ~~for a 120-day period.~~

9 ~~(2) The reservation must be made by filing with the secretary of state an application, executed by the~~
10 ~~applicant, to reserve a specified name. If the secretary of state finds that the name is available for use by a~~
11 ~~domestic or foreign limited liability company, the secretary of state shall reserve the name for the exclusive use~~
12 ~~of the applicant for a nonrenewable period of 120 days from the date the application is filed.~~

13 ~~(3)(2) The right to the exclusive use of a reserved name may be transferred to another person by filing~~
14 ~~with the secretary of state a notice of the transfer, executed by the applicant for whom the name was reserved,~~
15 ~~and by specifying the name to be transferred and the name and address of the transferee. The transfer may not~~
16 ~~extend the term during which the name is reserved~~ owner of a name reserved for a limited liability company may
17 ~~transfer the reservation to another person by delivering to the secretary of state for filing a signed notice of the~~
18 ~~transfer that states the name and address of the transferee."~~

19
20 **Section 6.** Section 35-8-106, MCA, is amended to read:

21 **"35-8-106. Purpose Nature, purpose, and duration of limited liability company.** (1) A limited liability
22 ~~company is an entity distinct from its members.~~

23 ~~(4)(2) A limited liability company organized under 35-8-201 through 35-8-211 has the purpose of~~
24 ~~engaging in may have any lawful business unless a more limited purpose, is set forth in the articles of~~
25 ~~organization regardless of whether for profit.~~

26 ~~(2)(3) Limited liability companies may be organized under 35-8-201 through 35-8-211 for any lawful~~
27 ~~purpose except for the purpose of banking or insurance~~ A limited liability company has perpetual obligation."

28
29 **Section 7.** Section 35-8-107, MCA, is amended to read:

30 **"35-8-107. Powers.** A limited liability company may:

- 1 ~~——— (1) has the capacity to sue; and be sued, complain, and defend in all courts in its own name;~~
- 2 ~~——— (2) transact its business, carry on its operations, and have and exercise the powers granted by this~~
3 ~~section in any state; in any territory, district, or possession of the United States; and in any foreign country;~~
- 4 ~~——— (3) make contracts and guarantees, incur liabilities, and borrow money;~~
- 5 ~~——— (4) sell, lease, exchange, transfer, convey, mortgage, pledge, and otherwise dispose of any of its assets;~~
- 6 ~~——— (5) acquire by purchase or in any other manner, take, receive, own, hold, improve, and otherwise deal~~
7 ~~with any interest in real or personal property, wherever located;~~
- 8 ~~——— (6) issue notes, bonds, and other obligations and secure any of them by mortgage, deed of trust, or~~
9 ~~security interest of any of its assets;~~
- 10 ~~——— (7) purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell,~~
11 ~~mortgage, loan, pledge, or otherwise dispose of and otherwise use and deal in and with stock or other interests~~
12 ~~in and obligations of domestic and foreign corporations, associations, general or limited partnerships, limited~~
13 ~~liability companies, business trusts, and individuals;~~
- 14 ~~——— (8) invest its surplus funds, lend money from time to time in any manner that may be appropriate to~~
15 ~~enable it to carry on the operations or fulfill the purposes set forth in its articles of organization, and take and hold~~
16 ~~real property and personal property as security for the payment of funds loaned or invested;~~
- 17 ~~——— (9) elect or appoint agents and define their duties and fix their compensation;~~
- 18 ~~——— (10) sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of all or any part~~
19 ~~of its property and assets;~~
- 20 ~~——— (11) be a promoter, stockholder, partner, member, associate, or agent of any corporation, partnership,~~
21 ~~domestic or foreign limited liability company, joint venture, trust, or other enterprise;~~
- 22 ~~——— (12) indemnify and hold harmless any member, agent, or employee from and against any claims and~~
23 ~~demands whatsoever, except in the case of action or failure to act by the member, agent, or employee that~~
24 ~~constitutes willful misconduct or recklessness, and subject to the standards and restrictions, if any, set forth in~~
25 ~~the articles of organization or operating agreement;~~
- 26 ~~——— (13) cease its activities and dissolve;~~
- 27 ~~——— (14) pay pensions and establish pension plans, pension trusts, profit-sharing plans, share bonus plans,~~
28 ~~share option plans, and benefit or incentive plans for any of its current or former directors, officers, employees,~~
29 ~~and agents;~~
- 30 ~~——— (15) make donations for the public welfare or for charitable, religious, scientific, or educational purposes~~

and, in time of war, make donations in aid of war activities; and
 (16) to do every other act not inconsistent with law that is appropriate to promote and further the business
 and affairs of the limited liability company all things necessary or convenient to carry on its activities."

NEW SECTION. Section 8. Governing law. The law of this state governs:

(1) the internal affairs of a limited liability company; and
 (2) the liability of a member as member and a manager as manager for the debts, obligations, or other
 liabilities of a limited liability company.

Section 9. Section 35-8-109, MCA, is amended to read:

**"35-8-109. ~~Effect of operating~~ Operating agreement -- nonwaivable provisions scope, function,
and limitations.** (1) Except as otherwise provided in ~~subsection~~ subsections (2) and (3), ~~all the operating~~
agreement governs:

(a) members of a limited liability company may enter into an operating agreement, which need not be
in writing, to regulate the affairs of the company and the conduct of its business and to govern relations among
the members as members, managers, and between the members and the limited liability company;

(b) the rights and duties under this chapter of a person in the capacity of manager;

(c) the activities of the company and the conduct of those activities; and

(d) the means and conditions for amending the operating agreement.

(2) To the extent that the operating agreement does not otherwise provide for a matter described in
subsection (1), this chapter governs relations among the members, managers, and company the matter.

(2) An operating agreement need not be in writing except as otherwise provided in this chapter to:

~~—— (a) vary the recordkeeping requirements under 35-8-405;~~

~~—— (b) vary the rights of members to share in distributions under 35-8-601 or 35-8-903; or~~

~~—— (c) vary the process for admission of members under 35-8-707.~~

(3) The An operating agreement may not:

~~—— (a) unreasonably restrict a right to information or access to records under 35-8-405;~~

~~—— (b) eliminate the duty of loyalty under 35-8-310, but the agreement may:~~

~~—— (i) identify specific types or categories of activities that do not violate the duty of loyalty, if not manifestly~~
~~unreasonable; and~~

1 ~~_____ (ii) specify the number or percentage of members or disinterested managers that may authorize or ratify,~~
2 ~~after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of~~
3 ~~loyalty;~~

4 ~~_____ (c) unreasonably reduce the duty of care under 35-8-310;~~

5 ~~_____ (d) eliminate the obligation of good faith and fair dealing under 35-8-310, but the operating agreement~~
6 ~~may determine the standards by which the performance of the obligation is to be measured, if the standards are~~
7 ~~not manifestly unreasonable;~~

8 ~~_____ (e) vary the right to expel a member upon the occurrence of an event specified in 35-8-803;~~

9 ~~_____ (f) vary the requirement to wind up the limited liability company's business in a case specified in~~
10 ~~35-8-901(1)(e) or 35-8-902; or~~

11 ~~_____ (g) restrict the rights of a person under this chapter, other than a manager, member, or transferee of a~~
12 ~~member's distributional interest.~~

13 (a) vary a limited liability company's capacity under 35-8-107 to sue and be sued in its own name;

14 (b) vary the law applicable under [section 8];

15 (c) vary the power of the court under 35-8-218;

16 (d) subject to subsections (4) through (7), eliminate the duty of loyalty, the duty of care, or any other
17 fiduciary duty;

18 (e) subject to subsections (4) through (7), eliminate the contractual obligation of good faith and fair
19 dealing under 35-8-310(4);

20 (f) unreasonably restrict the duties and rights stated in [section 31];

21 (g) vary the power of a court to decree dissolution in the circumstances specified in 35-8-901(1)(d) and
22 (1)(e);

23 (h) vary the requirement to wind up a limited liability company's activities as specified in [section 46(1)
24 and (2)(a)];

25 (i) unreasonably restrict the right of a member to maintain an action under part 9 of this chapter;

26 (j) restrict the right to approve a merger, conversion, or domestication under [section 81] to a member
27 that will have personal liability with respect to a surviving, converted, or domesticated organization; or

28 (k) except as otherwise provided in [section 11(2)], restrict the rights under this chapter of a person other
29 than a member or manager.

30 (4) If not manifestly unreasonable, the operating agreement may:

1 (a) restrict or eliminate the duty:

2 (i) as required in 35-8-310(2)(a) and (7), to account to the limited liability company and to hold as trustee
3 for it any property, profit, or benefit derived by the member in the conduct or winding up of the company's
4 activities, from a use by the member of the company's property, or from the appropriation of a limited liability
5 company opportunity;

6 (ii) as required in 35-8-310(2)(b) and (7), to refrain from dealing with the company in the conduct or
7 winding up of the company's activities as or on behalf of a party having an interest adverse to the company; and

8 (iii) as required by 35-8-210(2)(c) and (7), to refrain from competing with the company in the conduct of
9 the company's business before the dissolution of the company;

10 (b) identify specific types or categories of activities that do not violate the duty of loyalty;

11 (c) alter the duty of care, except to authorize intentional misconduct or knowing violation of law;

12 (d) alter any other fiduciary duty, including eliminating particular aspects of that duty; and

13 (e) prescribe the standards by which to measure the performance of the contractual obligation of good
14 faith and fair dealing under 35-8-310(4).

15 (5) The operating agreement may specify the method by which a specific act or transaction that would
16 otherwise violate the duty of loyalty may be authorized or ratified by one or more disinterested and independent
17 persons after full disclosure of all material facts.

18 (6) To the extent the operating agreement of a member-managed limited liability company expressly
19 relieves a member of a responsibility that the member would otherwise have under this chapter and imposes the
20 responsibility on one or more other members, the operating agreement may, to the benefit of the member that
21 the operating agreement relieves of the responsibility, also eliminate or limit any fiduciary duty that would have
22 pertained to the responsibility.

23 (7) The operating agreement may alter or eliminate the indemnification for a member or manager
24 provided by [section 29(1)] and may eliminate or limit a member or manager's liability to the limited liability
25 company and members for money damages, except for:

26 (a) breach of the duty of loyalty;

27 (b) a financial benefit received by the member or manager to which the member or manager is not
28 entitled;

29 (c) a breach of a duty under 35-8-605;

30 (d) intentional infliction of harm on the company or a member; or

1 (e) an intentional violation of criminal law.

2 (8) The court shall decide any claim under subsection (4) that a term of an operating agreement is
3 manifestly unreasonable. The court:

4 (a) shall make its determination as of the time the challenged term became part of the operating
5 agreement and by considering only circumstances existing at that time; and

6 (b) may invalidate the term only if, in light of the purposes and activities of the limited liability company,
7 it is readily apparent that:

8 (i) the objective of the term is unreasonable; or

9 (ii) the term is an unreasonable means to achieve the provision's objective."

10
11 **NEW SECTION. Section 10. Operating agreement -- effect on limited liability company and**
12 **persons becoming members -- preformation agreement.** (1) A limited liability company is bound by and may
13 enforce the operating agreement, whether or not the company has itself manifested assent to the operating
14 agreement.

15 (2) A person that becomes a member of a limited liability company is considered to assent to the
16 operating agreement.

17 (3) Two or more persons intending to become the initial members of a limited liability company may make
18 an agreement providing that upon the formation of the company the agreement will become the operating
19 agreement. One person intending to become the initial member of a limited liability company may assent to terms
20 providing that upon the formation of the company the terms will become the operating agreement.

21
22 **NEW SECTION. Section 11. Operating agreement -- effect on third parties and relationship to**
23 **records effective on behalf of limited liability company.** (1) An operating agreement may specify that its
24 amendment requires the approval of a person that is not a party to the operating agreement or the satisfaction
25 of a condition. An amendment is ineffective if its adoption does not include the required approval or satisfy the
26 specified condition.

27 (2) The obligations of a limited liability company and its members to a person in the person's capacity
28 as a transferee or dissociated member are governed by the operating agreement. Subject only to any court order
29 issued under [section 40(2)(b)] to effectuate a charging order, an amendment to the operating agreement made
30 after a person becomes a transferee or dissociated member is effective with regard to any debt, obligation, or

other liability of the limited liability company or its members to the person in the person's capacity as a transferee or dissociated member.

(3) If a record that has been delivered by a limited liability company to the secretary of state for filing and has become effective under this chapter contains a provision that would be ineffective under 35-8-109(3) if contained in the operating agreement, the provision is likewise ineffective in the record.

(4) Subject to subsection (3), if a record that has been delivered by a limited liability company to the secretary of state for filing and has become effective under this chapter conflicts with a provision of the operating agreement:

(a) the operating agreement prevails as to members, dissociated members, transferees, and managers; and

(b) the record prevails as to other persons to the extent they reasonably rely on the record.

Section 12. Section 35-8-110, MCA, is amended to read:

"35-8-110. Purpose -- supplemental Supplemental principles of law -- interest rate. (1) Unless displaced by particular provisions of this chapter, the principles of law and equity supplement this chapter.

(2) ~~If an obligation to pay interest arises under the provisions of this chapter and the rate of interest is not specified, then the rate is the rate of interest specified in 31-1-106."~~

Section 13. Section 35-8-111, MCA, is amended to read:

"35-8-111. Uniformity of application and construction. ~~Unless otherwise provided in this chapter, in~~ construing and applying this chapter, consideration must be applied and construed to effectuate its general purpose to make given to the need to promote uniformity of the law with respect to the subject of this chapter ~~matter among states enacting the Uniform Limited Liability Company Act that enact it."~~

Section 14. Section 35-8-202, MCA, is amended to read:

"35-8-202. ~~Articles~~ Formation of limited liability company -- certificate of organization. (1) One or more persons may act as organizers to form a limited liability company by signing and delivering to the secretary of state for filing a certificate of organization.

~~(1)(2) The articles~~ A certificate of organization must set forth state:

(a) the name of the limited liability company, that satisfies the requirements of which must comply with

1 35-8-103;

2 ~~(b) whether the company is a term company and, if so, the term specified;~~

3 ~~(c) the complete street address of its principal office, wherever located;~~

4 ~~(d)(b) the information required by 35-7-105(1); and~~

5 ~~(e) (i)(c) if the limited liability company is to be managed by a manager or managers, a statement that~~
6 ~~the company is to be managed in that fashion and the names and street addresses of managers who are to serve~~
7 ~~as managers until the first meeting of members or until their successors are elected;~~

8 ~~—— (ii) if the management of a limited liability company is reserved to the members, a statement that the~~
9 ~~company is to be managed in that fashion and the names and street addresses of the initial members;~~

10 ~~—— (f) whether one or more members of the company are to be liable for the limited liability company's debts~~
11 ~~and obligations under 35-8-304(3);~~

12 ~~—— (g) if the limited liability company is a professional limited liability company, a statement to that effect and~~
13 ~~a statement of the professional service or services it will render; and~~

14 ~~—— (h) any other provision, not inconsistent with law, that the members elect to set out in the articles,~~
15 ~~including but not limited to a statement of whether there are limitations on the authority of members or~~
16 ~~management to bind the limited liability company will have no members when the secretary of state files the~~
17 ~~certificate, a statement to that effect.~~

18 ~~(2) It is not necessary to set out in the articles of organization any of the powers enumerated in 35-8-107.~~

19 ~~—— (3) The articles of organization may not vary the nonwaivable provisions set out in 35-8-109. As to all~~
20 ~~other matters, if any provision of an operating agreement is inconsistent with the articles of organization:~~

21 ~~—— (a) the operating agreement controls as to managers, members, and a member's transferee; and~~

22 ~~—— (b) the articles of organization control as to a person, other than a manager, member, and member's~~
23 ~~transferee, that reasonably relies on the articles of organization to that person's detriment.~~

24 ~~(3) Subject to [section 11(3)], a certificate of organization may also contain statements as to matters~~
25 ~~other than those required by subsection (2) of this section. However, a statement in a certificate of organization~~
26 ~~is not effective as a statement of authority.~~

27 ~~(4) Unless the filed certificate of organization contains the statement as provided in subsection (2)(c),~~
28 ~~the following rules apply:~~

29 ~~(a) A limited liability company is formed when the secretary of state has filed the certificate of~~
30 ~~organization and the company has at least one member unless the certificate states a delayed effective date~~

1 pursuant to [section 17(3)].

2 (b) If the certificate states a delayed effective date, a limited liability company is not formed if, before the
3 certificate takes effect, a statement of cancellation is signed and delivered to the secretary of state for filing and
4 the secretary of state files the certificate.

5 (c) Subject to any delayed effective date and except in a proceeding by this state to dissolve a limited
6 liability company, the filing of the certificate of organization by the secretary of state is conclusive proof that the
7 organizer satisfied all conditions to the formation of a limited liability company.

8 (5) If a filed certificate of organization contains a statement as provided in subsection (2)(c), the following
9 rules apply:

10 (a) The certificate lapses and is void unless, within 90 days from the date the secretary of state files the
11 certificate, an organizer signs and delivers to the secretary of state for filing a notice stating:

12 (i) that the limited liability company has at least one member; and

13 (ii) the date on which a person or persons became the company's initial member or members.

14 (b) If an organizer complies with subsection (5)(a), a limited liability company is considered formed as
15 of the date of initial membership stated in the notice delivered pursuant to subsection (5)(a).

16 (c) Except in a proceeding by this state to dissolve a limited liability company, the filing of the notice
17 described in subsection (5)(a) by the secretary of state is conclusive proof that the organizer satisfied all
18 conditions to the formation of a limited liability company."

19
20 **Section 15.** Section 35-8-203, MCA, is amended to read:

21 **"35-8-203. Amendment of ~~articles of organization~~ or restatement of certificate of organization.**

22 ~~(1) The articles of organization of a limited liability company are~~ may be amended or restated at any
23 time.

24 ~~(2) by filing articles of amendment with~~ To amend its certificate of organization, a limited liability company
25 shall deliver to the secretary of state: for filing The articles of an amendment must set forth stating:

26 (a) the name of the limited liability company;

27 (b) the date ~~the articles of filing of its certificate of~~ organization were filed; and

28 (c) the changes the amendment makes to the ~~articles of organization~~ certificate as most recently
29 amended or restated.

30 ~~(2) The articles of organization may be amended as desired, so long as the amended articles of~~

organization contain only provisions that may be lawfully contained in articles of organization at the time of making the amendment.

(3) ~~Articles of organization may be restated at any time. Restated articles~~ To restate its certificate of organization, a limited liability company must be filed with shall deliver to the secretary of state for filing a restatement, must be specifically designated as such in the heading, and must state either stating:

(a) in the heading or in an introductory paragraph, the limited liability company's present name and, if it has been changed, all of its former names and the date of the filing of its articles of organization. Restated articles of organization supersede the original articles of organization and any previous amendments to the original articles of organization. company's initial certificate of organization;

(b) if the company's name has been changed at any time since the company's formation, each of the company's former names; and

(c) the changes the restatement makes to the certificate as most recently amended or restated.

~~(4) An amendment to the articles of organization of a limited liability company must be in the form and manner designated by the secretary of state.~~

(4) Subject to [sections 11(3) and 17(3)], an amendment to or restatement of a certificate of organization is effective when filed by the secretary of state.

(5) If a member of a member-managed limited liability company or a manager of a manager-managed limited liability company knows that any information in a filed certificate of organization was inaccurate when the certificate was filed or has become inaccurate owing to changed circumstances, the member or manager shall promptly:

(a) cause the certificate to be amended; or

(b) if appropriate, deliver to the secretary of state for filing a statement of change under 35-7-108 through 35-7-110 or a statement of correction under 35-8-215."

Section 16. Section 35-8-204, MCA, is amended to read:

"35-8-204. Execution of documents Signing of records to be delivered for filing to secretary of state. (1) ~~Unless otherwise specified in this chapter, a document required by this chapter to be filed with or A record delivered to the secretary of state for filing pursuant to this chapter must be executed signed as follows:~~

(a) ~~by any manager if management of the limited liability company is vested in one or more managers or by a member if management of the~~ Except as otherwise provided in subsections (1)(b) through (1)(d), a record

signed on behalf of a limited liability company is reserved to the members; must be signed by a person authorized by the company.

(b) if the limited liability company has not been formed, by the person or persons forming the limited liability company; or A limited liability company's initial certificate of organization must be signed by at least one person acting as an organizer.

(c) if the limited liability company is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary A notice under 35-8-202(5)(a) must be signed by an organizer.

(d) A record filed on behalf of a dissolved limited liability company that has no members must be signed by the person winding up the company's activities under [section 46(3)] or a person appointed under [section 46(4)] to wind up those activities.

(e) A statement of cancellation under 35-8-202(4)(b) must be signed by each organizer that signed the initial certificate of organization, but a personal representative of a deceased or incompetent organizer may sign in the place of the decedent or incompetent.

(f) A statement of denial by a person under [section 26] must be signed by that person.

(g) Any other record must be signed by the person on whose behalf the record is delivered to the secretary of state.

~~(2) The person executing the document shall sign it and state, beneath or opposite the signature, the person's name and the capacity in which the person signs.~~

~~——— (3) The person executing the document may do so as an attorney-in-fact. Powers of attorney relating to the execution of the document do not need to be shown to or filed with the secretary of state.~~

(2) Any record filed under this chapter may be signed by an agent."

NEW SECTION. Section 17. Delivery to and filing of records by secretary of state -- effective time and date. (1) A record authorized or required to be delivered to the secretary of state for filing under this chapter must be captioned to describe the record's purpose, be in a medium permitted by the secretary of state, and be delivered to the secretary of state. If the filing fees have been paid, unless the secretary of state determines that a record does not comply with the filing requirements of this chapter, the secretary of state shall file the record and:

(a) for a statement of denial under [section 26], send a copy of the filed statement and a receipt for the fees to the person on whose behalf the statement was delivered for filing and to the limited liability company; and

(b) for all other records, send a copy of the filed record and a receipt for the fees to the person on whose behalf the record was filed.

(2) Upon request and payment of the requisite fee, the secretary of state shall send to the requester a certified copy of a requested record.

(3) Except as otherwise provided in 35-7-111 and 35-8-215 and except for a certificate of organization that contains a statement as provided in 35-8-202(2)(c), a record delivered to the secretary of state for filing under this chapter may specify an effective time and a delayed effective date. Subject to 35-7-111, 35-8-202(4)(a), and 35-8-215, a record filed by the secretary of state is effective:

(a) if the record does not specify either an effective time or a delayed effective date, on the date and at the time the record is filed as evidenced by the secretary of state's endorsement of the date and time on the record;

(b) if the record specifies an effective time but not a delayed effective date, on the date the record is filed at the time specified in the record;

(c) if the record specifies a delayed effective date but not an effective time, at 12:01 a.m. on the earlier of:

(i) the specified date; or

(ii) the 90th day after the record is filed; or

(d) if the record specifies an effective time and a delayed effective date, at the specified time on the earlier of:

(i) the specified date; or

(ii) the 90th day after the record is filed.

Section 18. Section 35-8-208, MCA, is amended to read:

"35-8-208. Annual report for secretary of state. (1) ~~A~~ Each year, a limited liability company or a foreign limited liability company authorized to transact business in this state shall deliver to the secretary of state, for filing, an annual report that ~~sets forth~~ states:

(a) the name of the limited liability company ~~and the jurisdiction under whose law it is organized~~;

(b) the information required by 35-7-105(1);

(c) the ~~address~~ street and mailing addresses of its principal office, ~~wherever located~~;

(d) ~~(i) if the limited liability company is managed by a manager or managers, a statement that the~~

1 company is managed in that fashion and the names and street addresses of the managers;

2 ~~—— (ii) if the management of a limited liability company is reserved to the members, a statement to that~~
3 ~~effect;~~

4 ~~—— (e) if the limited liability company is a professional limited liability company, a statement that all of its~~
5 ~~members and not less than one-half of its managers are qualified persons with respect to the limited liability~~
6 ~~company in the case of a foreign limited liability company, the state or other jurisdiction under whose law the~~
7 ~~company is formed and any alternate name adopted under [section 57(1)].~~

8 (2) Information in ~~the~~ an annual report must be current as of the date the annual report is ~~executed on~~
9 ~~behalf of the limited liability company~~ delivered to the secretary of state for filing.

10 (3) The first annual report must be delivered to the secretary of state between January 1 and April 15
11 of the year following the calendar year in which a ~~domestic~~ limited liability company ~~is organized~~ was formed or
12 ~~a foreign limited liability company is~~ was authorized to transact business. ~~Subsequent~~ An annual reports report
13 must be delivered to the secretary of state between January 1 and April 15 of each subsequent calendar year.

14 (4) If an annual report does not contain the information required ~~by this section~~ in subsection (1), the
15 secretary of state shall promptly notify the reporting ~~domestic~~ limited liability company or foreign limited liability
16 company ~~in writing and return the report to the limited liability company it for correction. If the report is corrected~~
17 to contain the information required in subsection (1) and delivered to the secretary of state within 30 days after
18 the effective date of the notice, it is timely delivered.

19 (5) ~~The annual report must be executed by at least one member of the limited liability company or by the~~
20 ~~authorized agent.~~

21 ~~—— (6) A domestic professional limited liability company or a foreign professional limited liability company~~
22 ~~authorized to transact business in this state shall annually file before April 15, with each licensing authority having~~
23 ~~jurisdiction over a professional service of a type described in its articles of organization, a statement of~~
24 ~~qualification setting forth the names and addresses of the members and managers of the company and additional~~
25 ~~information that the licensing authority may by rule prescribe as appropriate in determining whether the company~~
26 ~~is complying with the provisions of part 13 of this chapter and rules promulgated under part 13 of this chapter.~~
27 ~~The licensing authority may charge a fee to cover the cost of filing a statement of qualification. If an annual report~~
28 ~~under this section contains an address of a designated office or the name or address of an agent for service of~~
29 ~~process that differs from the information shown in the records of the secretary of state immediately before the~~
30 ~~annual report becomes effective, the differing information in the annual report is considered a statement of~~

1 change under 35-7-108 through 35-7-110."

2

3 **Section 19.** Section 35-8-215, MCA, is amended to read:

4 **"35-8-215. Correcting filed record.** (1) A limited liability company or foreign limited liability company
5 may ~~correct a record filed by~~ deliver to the secretary of state ~~if the~~ for filing a statement of correction to correct
6 ~~a record contains a false or erroneous statement previously delivered by the company to the secretary of state~~
7 and filed by the secretary of state if at the time of filing the record contained inaccurate information or was
8 defectively signed.

9 (2) A ~~record must be corrected by:~~

10 ~~—— (a) preparing articles of correction that~~ statement of correction under subsection (1) may not state a
11 delayed effective date and must:

12 ~~(i)(a)~~ (i)(a) describe the record to be corrected, including its filing date, or ~~have attached~~ attach a copy of the
13 record ~~to the articles of correction as filed;~~

14 ~~(ii)(b)~~ (ii)(b) specify the ~~incorrect statement~~ incorrect information and the reason that it is ~~incorrect~~ inaccurate
15 or the manner in which the signing was defective; and

16 ~~(iii)(c)~~ (iii)(c) correct the ~~incorrect statement or defective signing~~ signature or inaccurate information; and

17 ~~—— (b) delivering the corrected record to the secretary of state for filing.~~

18 (3) ~~Articles of correction are~~ When filed by the secretary of state, a statement of correction under
19 subsection (1) is effective retroactively on as of the effective date of the record ~~that they correct except the~~
20 statement corrects, but the statement is effective when filed:

21 (a) for the purposes of 35-8-219(4); and

22 (b) as to persons ~~relying that previously relied~~ relying on the uncorrected record and would be adversely affected
23 by the correction. ~~As to those persons, the articles of correction are effective when filed retroactive effect."~~

24

25 **Section 20.** Section 35-8-216, MCA, is amended to read:

26 **"35-8-216. Certificate of existence or authority authorization.** (1) ~~A person may request the~~ The
27 secretary of state, upon request and payment of the requisite fee, shall to furnish to any person a certificate of
28 existence for a limited liability company ~~or a certificate of authority for a foreign limited liability company~~ if the
29 records filed in the office of the secretary of state show that the company has been formed under 35-8-202 and
30 the secretary of state has not filed a statement of termination pertaining to the company.

(2) A certificate of existence for a limited liability company must set forth state:

(a) the company's name;

(b) ~~that it is organized~~ the company was duly formed under the laws of this state; and the date of organization, whether its duration is at will or for a specified term, and, if for a specified term, the period specified formation;

(c) ~~if payment is reflected in the records of the secretary of state and if nonpayment affects the existence of the company, that whether~~ all fees, taxes, and penalties owed to this state due under this chapter or other law to the secretary of state have been paid;

(d) whether ~~its~~ the company's most recent annual report required by 35-8-208 has been filed ~~with~~ by the secretary of state;

(e) ~~that articles of termination have not been filed~~ whether the secretary of state has administratively dissolved the company;

(f) whether the company has delivered to the secretary of state for filing a statement of dissolution;

(g) that a statement of termination has not been filed by the secretary of state; and

~~(f)(h)~~ other facts of record in the office of the secretary of state ~~if requested by the applicant~~ that are specified by the person requesting the certificate.

~~(3)~~(2) The secretary of state, upon request and payment of the requisite fee, shall furnish to any person a certificate of authorization for a foreign limited liability company if the records filed in the office of the secretary of state show that the secretary of state has filed a certificate of authority, has not revoked the certificate of authority, and has not filed a notice of cancellation. A certificate of authority for a foreign limited liability company authorization must ~~set forth~~ state:

(a) the company's name ~~used~~ and any alternate name adopted under [section 57(1)] for use in this state;

(b) that it ~~the company~~ is authorized to transact business in this state;

(c) whether all fees, taxes, and penalties due under this chapter or other law to the secretary of state have been paid;

~~(e)~~(d) whether ~~its~~ the company's most recent annual report required by 35-8-208 has been filed ~~with~~ by the secretary of state;

~~(d)~~(e) ~~that a certificate of cancellation has not been filed~~ that the secretary of state has not revoked the company's certificate of authority and has not filed a notice of cancellation; and

~~(e)~~(f) other facts of record in the office of the secretary of state ~~if requested by the applicant~~ that are

1 specified by the person requesting the certificate.

2 ~~(4)(3)~~ Subject to any qualification stated in the certificate, a certificate of existence or ~~authority a~~
3 certificate of authorization issued by the secretary of state ~~may be relied upon as is~~ conclusive evidence ~~as of~~
4 ~~the date of the certificate~~ that the ~~domestic or foreign~~ limited liability company is in existence or the foreign limited
5 liability company is authorized to transact business in this state."

6
7 **Section 21.** Section 35-8-217, MCA, is amended to read:

8 **"35-8-217. Liability for false statement inaccurate information in filed record.** (1) ~~Subject to~~
9 ~~35-8-304 and 35-8-306, if~~ If a record authorized or required to be filed delivered to the secretary of state for filing
10 under this chapter and filed by the secretary of state contains a ~~false statement~~ inaccurate information, a person
11 ~~who~~ that suffers a loss by reliance on the ~~statement~~ information may recover damages for the loss from:

12 (a) the a person who that signed the record or caused another to sign it on ~~that~~ the person's behalf and
13 ~~who~~ knew the ~~statement~~ information to be ~~false~~ inaccurate at the time that the record was signed; and

14 (b) subject to subsection (2), a member of a member-managed limited liability company or the manager
15 of a manager-managed limited liability company if:

16 (i) the record was delivered for filing on behalf of the company; and

17 (ii) the member or manager had notice of the inaccuracy for a reasonably sufficient time before the
18 information was relied upon so that, before the reliance, the member or manager reasonably could have:

19 (A) effected an amendment under 35-8-203;

20 (B) filed a petition under 35-8-218; or

21 (C) delivered to the secretary of state for filing a statement of change under 35-7-108 or a statement of
22 correction under 35-8-215.

23 (2) To the extent that the operating agreement of a member-managed limited liability company expressly
24 relieves a member of responsibility for maintaining the accuracy of information contained in records delivered on
25 behalf of the company to the secretary of state for filing under this chapter and imposes that responsibility on one
26 or more other members, the liability stated in subsection (1)(b) applies to those other members and not to the
27 member that the operating agreement relieves of the responsibility.

28 (3) An individual who signs a record authorized or required to be filed under this chapter affirms under
29 penalty of perjury that the information stated in the record is accurate."

Section 22. Section 35-8-218, MCA, is amended to read:

"35-8-218. Filing by Signing and filing pursuant to judicial act order. (1) If a person required by 35-8-204 to execute any this chapter to sign a record or document fails or refuses deliver a record to the secretary of state for filing under this chapter fails to do so, a any other person who is adversely affected by the failure or refusal that is aggrieved may petition a district court to ~~direct the signing of the record or document order:~~

(a) the person to sign the record;

(b) the person to deliver the record to the secretary of state for filing; or

(c) the secretary of state to file the record unsigned. ~~If the court finds that it is proper for the record or document to be signed and that a designated person has failed or refused to sign the record, it shall order the secretary of state to sign and file an appropriate record or document.~~

(2) If a petitioner under subsection (1) is not the limited liability company or foreign limited liability company to which the record pertains, the petitioner shall make the company a party to the action."

Section 23. Section 35-8-219, MCA, is amended to read:

"35-8-219. Knowledge and notice. (1) A person knows a fact if when the person:

(a) has actual knowledge of the fact; or

(b) is considered to know it under subsection (4)(a) or under law other than this chapter.

(2) A person has notice of a fact if when the person:

(a) ~~knows the fact;~~

~~—— (b) has received a notification of the fact; or~~

~~—— (c) has reason to know that the fact exists from other all of the facts known to the person at the time in question; or~~

(b) is considered to have notice of the fact under subsection (4)(b).

(3) A person notifies ~~or gives a notification another~~ of a fact ~~to another~~ by taking steps reasonably required to inform the other person in ordinary course, whether or not the other person knows the fact.

(4) A person ~~receives a notification when the notification~~ that is not a member is considered:

(a) ~~comes to the person's attention to know of a limitation on authority to transfer real property as provided in [section 25(7)]; or and~~

(b) ~~is delivered at the person's place of business or at any other place held out by the person as a place for receiving communications~~ to have notice of a limited liability company's:

1 (i) dissolution 90 days after a statement of dissolution under [section 46(2)(b)(i)] becomes effective;
2 (ii) termination 90 days after a statement of termination [section 46(2)(b)(vi)] becomes effective; and
3 (iii) merger, conversion, or domestication 90 days after articles of merger, conversion, or domestication
4 under part 12 become effective.

5 ~~(5) (a) An entity knows, has notice, or receives a notification of a fact for purposes of a particular~~
6 ~~transaction:~~

7 ~~—— (i) when an individual conducting the transaction for the entity knows, has notice, or receives a~~
8 ~~notification of the fact; or~~

9 ~~—— (ii) when the fact would have been brought to the individual's attention had the entity exercised~~
10 ~~reasonable diligence.~~

11 ~~—— (b) (i) An entity exercises reasonable diligence if it maintains reasonable routines for communicating~~
12 ~~significant information to the individual conducting the transaction for the entity and there is reasonable~~
13 ~~compliance with the routines.~~

14 ~~—— (ii) Reasonable diligence does not require an individual acting for the entity to communicate information~~
15 ~~unless the communication is part of the individual's regular duties or the individual has reason to know of the~~
16 ~~transaction and to know that the transaction would be materially affected by the information."~~

17
18 **Section 24.** Section 35-8-301, MCA, is amended to read:

19 **"35-8-301. Agency No agency power of members and managers.** (1) ~~Except as provided in~~
20 ~~subsection (2), a~~ A member is not an agent of the limited liability company for the purpose of its business or
21 ~~affairs and the act of a member, including but not limited to the execution of any instrument in the name of the~~
22 ~~limited liability company for apparently carrying on in the usual way the business or affairs of the limited liability~~
23 ~~company binds the limited liability company, unless the member so acting has, in fact, no authority to act for the~~
24 ~~limited liability company in the particular matter and the person with whom the member is dealing has knowledge~~
25 ~~of the fact that the member has no such authority~~ solely by reason of being a member.

26 (2) ~~If the articles of organization provide that management of the limited liability company is vested in~~
27 ~~a manager or managers:~~

28 ~~—— (a) a member, acting solely in the capacity as a member, may not be an agent of the limited liability~~
29 ~~company; and~~

30 ~~—— (b) a manager is an agent of the limited liability company for the purpose of its business or affairs and~~

~~the act of a manager, including but not limited to the execution of any instrument in the name of the limited liability company for apparently carrying on in the usual way the business or affairs of the limited liability company binds the limited liability company, unless the manager so acting has, in fact, no authority to act for the limited liability company in the particular matter and the person with whom the manager is dealing has knowledge of the fact that the manager has no such authority. A person's status as a member does not prevent or restrict law other than this chapter from imposing liability on a limited liability company because of the person's conduct.~~

~~(3) An act of a manager or a member that is not apparently for carrying on in the usual way the business of the limited liability company does not bind the limited liability company, unless authorized in accordance with the articles of organization or the operating agreement, at the time of the transaction or at any other time.~~

~~———— (4) An act of a manager or member in contravention of a restriction on authority may not bind the limited liability company to persons having knowledge of the restriction."~~

NEW SECTION. Section 25. Statement of authority. (1) A limited liability company may deliver to the secretary of state for filing a statement of authority. The statement:

(a) must include the name of the company and the street and mailing addresses of its designated office;

(b) with respect to any position that exists in or with respect to the company, may state the authority, or limitations on the authority, of all persons holding the position to:

(i) execute an instrument transferring real property held in the name of the company; or

(ii) enter into other transactions on behalf of or otherwise act for or bind the company; and

(c) may state the authority, or limitations on the authority, of a specific person to:

(i) execute an instrument transferring real property held in the name of the company; or

(ii) enter into other transactions on behalf of, or otherwise act for or bind, the company.

(2) To amend or cancel a statement of authority filed by the secretary of state under [section 17(1)], a limited liability company shall deliver to the secretary of state for filing an amendment or cancellation stating:

(a) the name of the company;

(b) the street and mailing addresses of the company's designated office;

(c) the caption of the statement being amended or canceled and the date the statement being affected became effective; and

(d) the contents of the amendment or a declaration that the statement being affected is canceled.

(3) A statement of authority affects only the power of a person to bind a limited liability company to

1 persons that are not members.

2 (4) Subject to 35-8-219(4) and subsection (3) of this section and except as otherwise provided in
3 subsections (6), (7), and (8) of this section, a limitation on the authority of a person or a position contained in an
4 effective statement of authority is not by itself evidence of knowledge or notice of the limitation by any person.

5 (5) Subject to subsection (3), a grant of authority not pertaining to transfers of real property and
6 contained in an effective statement of authority is conclusive in favor of a person that gives value in reliance on
7 the grant, except to the extent that when the person gives value:

8 (a) the person has knowledge to the contrary;

9 (b) the statement has been canceled or restrictively amended under subsection (2); or

10 (c) a limitation on the grant is contained in another statement of authority that became effective after the
11 statement containing the grant became effective.

12 (6) Subject to subsection (3), an effective statement of authority that grants authority to transfer real
13 property held in the name of the limited liability company and that is recorded by certified copy in the office for
14 recording transfers of the real property is conclusive in favor of a person that gives value in reliance on the grant
15 without knowledge to the contrary, except to the extent that when the person gives value:

16 (a) the statement has been canceled or restrictively amended under subsection (2) and a certified copy
17 of the cancellation or restrictive amendment has been recorded in the office for recording transfers of the real
18 property; or

19 (b) a limitation on the grant is contained in another statement of authority that became effective after the
20 statement containing the grant became effective and a certified copy of the later-effective statement is recorded
21 in the office for recording transfers of the real property.

22 (7) Subject to subsection (3), if a certified copy of an effective statement containing a limitation on the
23 authority to transfer real property held in the name of a limited liability company is recorded in the office for
24 recording transfers of that real property, all persons are deemed to know of the limitation.

25 (8) Subject to subsection (9), an effective statement of dissolution or termination is a cancellation of any
26 filed statement of authority for the purposes of subsection (6) and is a limitation on authority for the purposes of
27 subsection (7).

28 (9) After a statement of dissolution becomes effective, a limited liability company may deliver to the
29 secretary of state for filing and, if appropriate, may record a statement of authority that is designated as a
30 postdissolution statement of authority. The statement operates as provided in subsections (6) and (7).

(10) Unless earlier canceled, an effective statement of authority is canceled by operation of law 5 years after the date on which the statement or its most recent amendment becomes effective. This cancellation operates without need for any recording under subsection (6) or (7).

(11) An effective statement of denial operates as a restrictive amendment under this section and may be recorded by certified copy for the purposes of subsection (6)(a).

NEW SECTION. Section 26. Statement of denial. A person named in a filed statement of authority granting that person authority may deliver to the secretary of state for filing a statement of denial that:

(1) provides the name of the limited liability company and the caption of the statement of authority to which the statement of denial pertains; and

(2) denies the grant of authority.

Section 27. Section 35-8-304, MCA, is amended to read:

"35-8-304. Liability of members and managers to third parties. (1) ~~Except as provided in subsection (3), a person who is a member or manager, or both, of a limited liability company is not liable, solely by reason of being a member or manager, or both, under a judgment, decree or order of a court, or in any other manner, for a debt, obligation, or liability of the limited liability company, whether arising in contract, tort, or otherwise or for the acts or omissions of any other member, manager, agent, or employee of the limited liability company. The~~ debts, obligations, or other liabilities of a limited liability company, whether arising in contract, tort, or otherwise:

(a) are solely the debts, obligations, or other liabilities of the company; and

(b) do not become the debts, obligations, or other liabilities of a member or manager solely by reason of the member acting as a member or manager acting as a manager.

(2) The failure of a limited liability company to observe ~~the usual company~~ any particular formalities or ~~requirements~~ relating to the exercise of its ~~company~~ powers or management of its ~~business~~ activities is not a ground for imposing ~~personal~~ liability on the members or managers for the debts, obligations, or other liabilities of the ~~limited liability~~ company.

~~(3) All or specified members of a limited liability company are liable in their capacity as members for all or specified debts, obligations, or liabilities of the company if:~~

~~—— (a) a provision to that effect is contained in the articles of organization; and~~

~~—— (b) a member named as liable has consented in writing to the adoption of the provision or to be bound~~

1 by the provision."

2
3 **Section 28.** Section 35-8-307, MCA, is amended to read:

4 **"35-8-307. Management and voting of limited liability company.** (1) ~~Unless the articles of~~
5 ~~organization or the operating agreement provide otherwise, in a member-managed company:~~

6 ~~—— (a) each member has equal rights in the management and conduct of the company's business; and~~

7 ~~—— (b) except as provided in subsection (3), any matter relating to the business of the company may be~~
8 ~~decided by a majority of the members.~~

9 ~~—— (2) Unless the articles of organization or the operating agreement provide otherwise, in a~~
10 ~~manager-managed company: A limited liability company is a member-managed limited liability company unless~~
11 ~~the operating agreement:~~

12 (a) expressly provides that:

13 (i) the company is or will be "manager-managed";

14 (ii) the company is or will be "managed by managers"; or

15 (iii) management of the company is or will be "vested in managers"; or

16 (b) includes words of similar import.

17 (2) In a member-managed limited liability company, the following rules apply:

18 (a) The management and conduct of the company are vested in the members.

19 ~~(a)(b) each manager~~ Each member has equal rights in the management and conduct of the company's
20 ~~business; activities.~~

21 ~~(b)(c) except as provided in subsection (3), any~~ A difference arising among members as to a matter
22 relating to the business in the ordinary course of the activities of the company may be ~~exclusively~~ decided by the
23 ~~manager or, if there is more than one manager, by a majority of the managers; and members.~~

24 ~~(c) a manager:~~

25 ~~—— (i) must be designated, appointed, elected, removed, or replaced by a vote, approval, or consent of a~~
26 ~~majority of the members; and~~

27 ~~—— (ii) holds office until a successor has been elected and qualified, unless the manager sooner resigns or~~
28 ~~is removed.~~

29 (d) An act outside the ordinary course of the activities of the company may be undertaken only with the
30 consent of all members.

1 (e) The operating agreement may be amended only with the consent of all members.

2 (3) In a manager-managed limited liability company, the following rules apply:

3 (a) Except as otherwise expressly provided in this chapter, any matter relating to the activities of the
4 company is decided exclusively by the managers.

5 (b) Each manager has equal rights in the management and conduct of the activities of the company.

6 (c) A difference arising among managers as to a matter in the ordinary course of the activities of the
7 company may be decided by a majority of the managers.

8 ~~(3)(d) Unless the articles of organization or the operating agreement provide otherwise, the only matters~~
9 ~~of a member-managed or manager-managed company's business requiring the~~ The ~~consent of all of the~~
10 ~~members are~~ is required to:

11 (i) sell, lease, exchange, or otherwise dispose of all, or substantially all, of the company's property, with
12 or without the good will, outside the ordinary course of the company's activities;

13 (ii) approve a merger, conversion, or domestication under part 12;

14 (iii) undertake any other act outside the ordinary course of the company's activities; and

15 ~~(a)(iv) the amendment of~~ amend ~~the operating agreement under 35-8-109;~~

16 ~~(b) the authorization or ratification of acts or transactions under 35-8-109(3)(b)(ii) that would otherwise~~
17 ~~violate the duty of loyalty;~~

18 ~~—— (c) an amendment to the articles of organization under 35-8-203;~~

19 ~~—— (d) the compromise of an obligation to make a contribution under 35-8-502;~~

20 ~~—— (e) the compromise, as among members, of an obligation to make a contribution or return money or other~~
21 ~~property paid or distributed in violation of this chapter;~~

22 ~~—— (f) the making of interim distributions under 35-8-601, including the redemption or repurchase of an~~
23 ~~interest;~~

24 ~~—— (g) the admission of a new member;~~

25 ~~—— (h) the use of the company's property to redeem an interest subject to a charging order;~~

26 ~~—— (i) the consent to dissolve the company under 35-8-901;~~

27 ~~—— (j) a waiver of the right to have the company's business wound up and the company terminated under~~
28 ~~35-8-901;~~

29 ~~—— (k) the consent of members to merge with another entity under 35-8-1201; and~~

30 ~~—— (l) the sale, lease, exchange, or other disposal of all, or substantially all, of the company's property with~~

1 ~~or without goodwill.~~

2 ~~—— (4) Action requiring the consent of members or managers under this chapter may be taken without a~~
3 ~~meeting.~~

4 ~~—— (5) A member or manager may appoint a proxy to vote or otherwise act for the member or manager by~~
5 ~~signing an appointment instrument, either personally or by the member's or manager's attorney-in-fact.~~

6 (e) A manager may be chosen at any time by the consent of a majority of the members and remains a
7 manager until a successor has been chosen unless the manager at an earlier time resigns, is removed, or dies
8 or, in the case of a manager that is not an individual, terminates. A manager may be removed at any time by the
9 consent of a majority of the members without notice or cause.

10 (f) A person need not be a member to be a manager, but the dissociation of a member that is also a
11 manager removes the person as a manager. If a person that is both a manager and a member ceases to be a
12 manager, that cessation does not by itself dissociate the person as a member.

13 (g) A person's ceasing to be a manager does not discharge any debt, obligation, or other liability to the
14 limited liability company or members that the person incurred while a manager.

15 (4) An action requiring the consent of members under this chapter may be taken without a meeting, and
16 a member may appoint a proxy or other agent to consent or otherwise act for the member by signing an
17 appointing record, personally or by the member's agent.

18 (5) The dissolution of a limited liability company does not affect the applicability of this section. However,
19 a person that wrongfully causes dissolution of the company loses the right to participate in management as a
20 member and a manager.

21 (6) This chapter does not entitle a member to remuneration for services performed for a
22 member-managed limited liability company, except for reasonable compensation for services rendered in winding
23 up the activities of the company."

24
25 **NEW SECTION. Section 29. Indemnification and insurance.** (1) A limited liability company shall
26 reimburse for any payment made and indemnify for any debt, obligation, or other liability incurred by a member
27 of a member-managed limited liability company or the manager of a manager-managed limited liability company
28 in the course of the member's or manager's activities on behalf of the company if, in making the payment or
29 incurring the debt, obligation, or other liability, the member or manager complied with the duties stated in
30 35-8-310 and 35-8-604.

(2) A limited liability company may purchase and maintain insurance on behalf of a member or manager of the company against liability asserted against or incurred by the member or manager in that capacity or arising from that status even if, under 35-8-109(7), the operating agreement could not eliminate or limit the person's liability to the company for the conduct giving rise to the liability.

Section 30. Section 35-8-310, MCA, is amended to read:

"35-8-310. General standards of member's and manager's Standards of conduct for members and managers. (1) ~~The only fiduciary duties that a~~ A member owes to of a member-managed limited liability company owes to the company and, subject to [section 62(2)], to the other members are the fiduciary duty duties of loyalty and care imposed by subsection stated in subsections (2) and the duty of care imposed by subsection (3) of this section.

(2) ~~A member's~~ The duty of loyalty to a member in a member-managed limited liability company and its other members is limited to the following includes the duties:

(a) to account to the company and to hold as trustee for it any property, profit, or benefit derived by the member;

(i) in the conduct or winding up of the company's ~~business activities;~~

(ii) ~~or derived from a use by the member of the company's property, including; or~~

(iii) from the appropriation of a company's opportunity;

(b) to refrain from dealing with the company in the conduct or winding up of the company's ~~business activities as or on behalf of a party or as a person having an interest adverse to the company; and~~

(c) to refrain from competing with the company in the conduct of the company's ~~business activities~~ before the dissolution of the company.

(3) ~~A member's~~ Subject to the business judgment rule, the duty of care to of a member of a member-managed limited liability company and the other members in the conduct of and winding up of the company's business activities is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law. to act with the care that a person in a like position would reasonably exercise under similar circumstances and in a manner the member reasonably believes to be in the best interests of the company. In discharging this duty, a member may rely in good faith upon opinions, reports, statements, or other information provided by another person that the member reasonably believes is a competent and reliable source for the information.

~~(4) A member shall discharge the duties under this chapter or the operating agreement to a member-managed company and its other members and exercise any rights consistently with the obligation of good faith and fair dealing.~~

~~(5)(4) A member of a member-managed limited liability company does not violate a duty or obligation or a manager-managed limited liability company shall discharge the duties under this chapter or under the operating agreement merely because the member's conduct furthers the member's own interest and exercise any rights consistently with the contractual obligation of good faith and fair dealing.~~

~~(6) A member of a member-managed company may lend money to and transact other business with the company. As to each loan or transaction, the rights and obligations of the member are the same as those of a person who is not a member, subject to other applicable law.~~

~~————(7) This section applies to a person winding up the limited liability company's business as the personal or legal representative of the last surviving member as if the person were a member.~~

~~(5) It is a defense to a claim under subsection (2)(b) and any comparable claim in equity or at common law that the transaction was fair to the limited liability company.~~

~~(6) All of the members of a member-managed limited liability company or a manager-managed limited liability company may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty.~~

~~(8)(7) In a manager-managed limited liability company, the following rules apply:~~

~~(a) a member who is not also a manager owes no duties to the company or to the other members solely by reason of being a member;~~

~~————(b) a manager is held to the same standards of conduct as those prescribed for members in subsections (2) through (6);~~

~~————(c) a member who pursuant to the operating agreement exercises some or all of the rights of a manager in the management and conduct of the company's business is held to the standards of conduct prescribed for members in subsections (2) through (6) to the extent that the member exercises the managerial authority vested in a manager by this chapter; and~~

~~————(d) a manager is relieved of liability imposed by law for violation of the standards prescribed for members by subsections (2) through (6) to the extent of the managerial authority delegated to the members by the operating agreement.~~

~~(a) Subsections (1), (2), (3), and (5) apply to the manager or managers and not the members.~~

1 (b) The duty stated under subsection (2)(c) continues until winding up is completed.

2 (c) Subsection (4) applies to the members and managers.

3 (d) Subsection (6) applies only to the members.

4 (e) A member does not have any fiduciary duty to the company or to any other member solely by reason
5 of being a member."

6
7 **NEW SECTION. Section 31. Right of members, managers, and dissociated members to**
8 **information.** (1) In a member-managed limited liability company, the following rules apply:

9 (a) On reasonable notice, a member may inspect and copy during regular business hours, at a
10 reasonable location specified by the company, any record maintained by the company regarding the company's
11 activities, financial condition, and other circumstances to the extent the information is material to the member's
12 rights and duties under the operating agreement or this chapter.

13 (b) The company shall furnish to each member:

14 (i) without demand, any information concerning the company's activities, financial condition, and other
15 circumstances that the company knows and is material to the proper exercise of the member's rights and duties
16 under the operating agreement or this chapter, except to the extent the company can establish that it reasonably
17 believes the member already knows the information; and

18 (ii) on demand, any other information concerning the company's activities, financial condition, and other
19 circumstances, except to the extent the demand or information demanded is unreasonable or otherwise improper
20 under the circumstances.

21 (c) The duty to furnish information under subsection (1)(b) also applies to each member to the extent
22 the member knows any of the information described in subsection (1)(b).

23 (2) In a manager-managed limited liability company, the following rules apply:

24 (a) The informational rights stated in subsection (1)(a) and the duty stated in subsection (1)(c) apply to
25 the managers and not the members.

26 (b) During regular business hours and at a reasonable location specified by the company, a member may
27 obtain from the company and inspect and copy full information regarding the activities, financial condition, and
28 other circumstances of the company as is just and reasonable if:

29 (i) the member seeks the information for a purpose material to the member's interest as a member;

30 (ii) the member makes a demand in a record received by the company, describing with reasonable

1 particularity the information sought and the purpose for seeking the information; and

2 (iii) the information sought is directly connected to the member's purpose.

3 (c) Within 10 days after receiving a demand pursuant to subsection (1)(b)(ii), the company shall in a
4 record inform the member that made the demand:

5 (i) of the information that the company will provide in response to the demand and when and where the
6 company will provide the information; and

7 (ii) if the company declines to provide any demanded information, the company's reasons for declining.

8 (d) Whenever this chapter or an operating agreement provides for a member to give or withhold consent
9 to a matter, before the consent is given or withheld, the company shall, without demand, provide the member with
10 all information that is known to the company and is material to the member's decision.

11 (3) On 10 days' demand made in a record received by a limited liability company, a dissociated member
12 may have access to information to which the person was entitled while a member if the information pertains to
13 the period during which the person was a member, the person seeks the information in good faith, and the person
14 satisfies the requirements imposed on a member by subsection (2)(b). The company shall respond to a demand
15 made pursuant to this subsection in the manner provided in subsection (2)(c).

16 (4) A limited liability company may charge a person that makes a demand under this section the
17 reasonable costs of copying, limited to the costs of labor and material.

18 (5) A member or dissociated member may exercise rights under this section through an agent or, in the
19 case of an individual under legal disability, a legal representative. Any restriction or condition imposed by the
20 operating agreement or under subsection (7) applies both to the agent or legal representative and the member
21 or dissociated member.

22 (6) The rights under this section do not extend to a person as transferee.

23 (7) In addition to any restriction or condition stated in its operating agreement, a limited liability company,
24 as a matter within the ordinary course of its activities, may impose reasonable restrictions and conditions on
25 access to and use of information to be furnished under this section, including designating information confidential
26 and imposing nondisclosure and safeguarding obligations on the recipient. In a dispute concerning the
27 reasonableness of a restriction under this subsection, the company has the burden of proving reasonableness.

28
29 **NEW SECTION. Section 32. Becoming member.** (1) If a limited liability company is to have only one
30 member upon formation, the person becomes a member as agreed by that person and the organizer of the

company. That person and the organizer may be, but need not be, different persons. If different, the organizer acts on behalf of the initial member.

(2) If a limited liability company is to have more than one member upon formation, those persons become members as agreed by the persons before the formation of the company. The organizer acts on behalf of the persons in forming the company and may be, but need not be, one of the persons.

(3) If a filed certificate of organization contains the statement required by 35-8-202(2)(c), a person becomes an initial member of the limited liability company with the consent of a majority of the organizers. The organizers may consent to more than one person simultaneously becoming the company's initial members.

(4) After formation of a limited liability company, a person becomes a member:

(a) as provided in the operating agreement;

(b) as the result of a transaction effective under part 12;

(c) with the consent of all the members; or

(d) if, within 90 consecutive days after the company ceases to have any members:

(i) the last person to have been a member or the legal representative of that person designates a person to become a member; and

(ii) the designated person consents to become a member.

(5) A person may become a member without acquiring a transferable interest and without making or being obligated to make a contribution to the limited liability company.

Section 33. Section 35-8-501, MCA, is amended to read:

"35-8-501. Contributions to capital Form of contribution. ~~An interest in a limited liability company may be issued in exchange for~~ A contribution may consist of tangible or intangible property or other benefit to the a ~~limited liability~~ company, including money, promissory notes, services performed, or other agreements to contribute ~~cash or~~ money and property or contracts for services to be performed."

Section 34. Section 35-8-502, MCA, is amended to read:

"35-8-502. Liability for contribution. (1) ~~A promise by a member to contribute~~ person's obligation to make a contribution to the a limited liability company is not ~~enforceable unless set out in a writing signed by the~~ member.

~~(2) (a) Except as provided in the articles of organization or the operating agreement, a member is~~

1 obligated to the limited liability company to perform any enforceable promises to contribute cash or property or
2 to perform services even if the member is unable to perform because of excused by the person's death, disability,
3 or other ~~reason~~ inability to perform personally.

4 (b) If a ~~member~~ person does not make ~~the a~~ required contribution of property or services, the ~~member~~
5 person or the person's estate is obligated, ~~at the option of the limited liability company,~~ to contribute cash money
6 equal to ~~that portion of the value or the stated of the part of the~~ contribution that has not been made, at the option
7 of the company.

8 (3) ~~(a) Unless otherwise provided in the articles of organization or the operating agreement, the~~
9 ~~obligation of a member to make a contribution or return money or other property paid or distributed in violation~~
10 ~~of this chapter may be compromised only with the unanimous consent of the members.~~

11 ~~(b)(2)~~ A creditor of a limited liability company ~~who~~ that extends credit or otherwise acts in reliance on an
12 obligation described in subsection (1), ~~and without notice of any compromise under 35-8-307(3)(d),~~ may enforce
13 the ~~original~~ obligation."

14
15 **NEW SECTION. Section 35. Sharing of and right to distributions before dissolution.** (1) Any
16 distributions made by a limited liability company before its dissolution and winding up must be in equal shares
17 among members and dissociated members, except to the extent necessary to comply with any transfer effective
18 under [section 39] and any charging order in effect under [section 40].

19 (2) A person has a right to a distribution before the dissolution and winding up of a limited liability
20 company only if the company decides to make an interim distribution. A person's dissociation does not entitle the
21 person to a distribution.

22 (3) A person does not have a right to demand or receive a distribution from a limited liability company in
23 any form other than money. Except as otherwise provided in [section 52(3)], a limited liability company may
24 distribute an asset in kind if each part of the asset is fungible with each other part and each person receives a
25 percentage of the asset equal in value to the person's share of distributions.

26 (4) If a member or transferee becomes entitled to receive a distribution, the member or transferee has
27 the status of and is entitled to all remedies available to a creditor of the limited liability company with respect to
28 the distribution.

29
30 **Section 36.** Section 35-8-604, MCA, is amended to read:

"35-8-604. Distributions Limitations on distribution. (1) A limited liability company may not make

a distribution may not be made if, after giving effect to the distribution:

(a) the limited liability company would not be able to pay its debts as they become due in the usual ordinary course of business the company's activities; or

(b) the limited liability company's total assets would be less than the sum of its total liabilities plus, unless the articles of organization or the operating agreement provides otherwise, the amount that would be needed, if the limited liability company were to be dissolved, wound up, and terminated at the time of the distribution, to satisfy the preferential rights, upon dissolution, winding up, and termination, of other members upon dissolution that whose rights are superior to the rights of the member those of persons receiving the distribution.

(2) The A limited liability company may base a determination that a distribution is not prohibited under subsection (1) on either:

———(a) financial statements prepared on the basis of accounting practices and principles that are reasonable under the circumstances; or

(b) on a fair valuation or other method that is reasonable under the circumstances.

(3) Except as provided in subsection (5), the effect of a distribution under subsection (1) is measured as of:

(a) in the case of a distribution by purchase, redemption, or other acquisition of a transferable interest in the company, as of the date money or other property is transferred or debt is incurred by the company; and

(a)(b) in all other cases, as of the date;

(i) the distribution is authorized if the payment occurs within 120 days after the date of authorization; or

(b)(ii) the date payment is made if it occurs more than 120 days after the date of authorization the distribution is authorized.

(4) A limited liability company's indebtedness to a member incurred by reason of a distribution to be made to that member in accordance with this section is at parity with the limited liability company's indebtedness to its general unsecured creditors, except as otherwise provided by agreement.

(5) For A limited liability company's indebtedness, including indebtedness issued in connection with or as part of a distribution, is not a liability for purposes of this section subsection (1):

———(a) if terms of indebtedness provide that payment of principal and interest is to be made only if and to the extent that payment of a distribution to members could then be made to members under this section; indebtedness of a limited liability company, including,

~~(6) If indebtedness issued as a distribution, is not a liability for purposes of determinations made under subsection (2); and~~

~~—— (b) if the indebtedness is issued as a distribution, each payment of principal or interest on the indebtedness is treated as a distribution, the effect of which is measured on the date the payment is actually made.~~

~~(7) In subsection (1), "distribution" does not include amounts constituting reasonable compensation for present or past services or reasonable payments made in the ordinary course of business under a bona fide retirement plan or other benefits program."~~

Section 37. Section 35-8-605, MCA, is amended to read:

"35-8-605. Liability upon wrongful for improper distribution. ~~(1) A member or manager who votes for or assents~~ Except as otherwise provided in subsection (2), if a member of a member-managed limited liability company or manager of a manager-managed limited liability company consents to a distribution in violation of the articles of organization, the operating agreement, or 35-8-604 and in consenting to the distribution fails to comply with 35-8-310, the member or manager is personally liable to the limited liability company, but not to other persons, for the amount of the distribution that exceeds what the amount that could have been distributed without violating the violation of 35-8-604 or the articles of organization or the operating agreement if it is established that the member or manager did not perform the member's or manager's duties in compliance with 35-8-310.

~~(2) A member~~ To the extent of the operating agreement of a manager-managed limited liability company who knew a distribution was made in violation of 35-8-604, the articles of organization, or the operating agreement is personally liable to the company, but only to the extent that the distribution received by that member exceeded the amount that could have properly been paid to that member under 35-8-604 expressly relieves a member of the authority and responsibility to consent to distributions and imposes that authority and responsibility on one or more other members, the liability stated in subsection (1) applies to the other members and not the member that the operating agreement relieves of authority and responsibility.

~~(3) A person that receives a distribution knowing that the distribution to that person was made in violation of 35-8-604 is personally liable to the limited liability company but only to the extent that the distribution received by the person exceeded the amount that could have been properly paid under 35-8-604.~~

~~(3)(4) A member or manager person against whom which an action is brought under this section may implead in the action~~ commenced because the person is liable under subsection (1) may implead any person that:

(a) ~~other members and managers who voted for or assented to the distribution in violation of~~ is subject to liability under subsection (1) and may seek to compel contribution from ~~them~~ the person; and

(b) ~~members who~~ received a distribution in violation of subsection ~~(2)~~ (3) and may seek to compel a contribution from the ~~members~~ person in the amount the person received in violation of subsection ~~(2)~~ (3).

~~(4)(5) A proceeding~~ An action under this section is barred ~~unless~~ if it is not commenced within 2 years after ~~the date of~~ the distribution."

Section 38. Section 35-8-703, MCA, is amended to read:

"35-8-703. Nature of distributional transferable interest. ~~(1) A member is not a co-owner of, and does not have a transferable interest in; is personal property of a limited liability company.~~

~~(2) A member's distributional interest in a limited liability company is personal property and, subject to the provisions of 35-8-707, may be transferred in whole or in part.~~

~~——— (3) An operating agreement may provide that a member's distributional interest may be evidenced by a certificate of the interest issued by the limited liability company and, subject to the provisions of 35-8-707, may also provide for the transfer of any interest represented by the certificate."~~

NEW SECTION. Section 39. Transfer of transferable interest. (1) A transfer, in whole or in part, of a transferable interest:

(a) is permissible;

(b) does not by itself cause a member's dissociation or a dissolution and winding up of the limited liability company's activities; and

(c) subject to [section 41], does not entitle the transferee to:

(i) participate in the management or conduct of the company's activities; or

(ii) except as otherwise provided in subsection (3) of this section, have access to records or other information concerning the company's activities.

(2) A transferee has the right to receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled.

(3) In a dissolution and winding up of a limited liability company, a transferee is entitled to an account of the company's transactions only from the date of dissolution.

(4) A transferable interest may be evidenced by a certificate of the interest issued by the limited liability

1 company in a record, and subject to this section, the interest represented by the certificate may be transferred
2 by a transfer of the certificate.

3 (5) A limited liability company need not give effect to a transferee's rights under this section until the
4 company has notice of the transfer.

5 (6) A transfer of a transferable interest in violation of a restriction on transfer contained in the operating
6 agreement is ineffective as to a person having notice of the restriction at the time of transfer.

7 (7) Except as otherwise provided in 35-8-803(4)(b), when a member transfers a transferable interest, the
8 transferor retains the rights of a member other than the interest in distributions transferred and retains all duties
9 and obligations of a member.

10 (8) When a member transfers a transferable interest to a person that becomes a member with respect
11 to the transferred interest, the transferee is liable for the member's obligations under 35-8-502 and 35-8-605(3)
12 known to the transferee when the transferee becomes a member.

13
14 **NEW SECTION. Section 40. Charging order.** (1) On application by a judgment creditor of a member
15 or transferee, a court may enter a charging order against the transferable interest of the judgment debtor for the
16 unsatisfied amount of the judgment. A charging order constitutes a lien on a judgment debtor's transferable
17 interest and requires the limited liability company to pay over to the person to which the charging order was
18 issued any distribution that would otherwise be paid to the judgment debtor.

19 (2) To the extent necessary to effectuate the collection of distributions pursuant to a charging order in
20 effect under subsection (1), the court may:

21 (a) appoint a receiver of the distributions subject to the charging order, with the power to make all
22 inquiries the judgment debtor might have made; and

23 (b) make all other orders necessary to give effect to the charging order.

24 (3) Upon a showing that distributions under a charging order will not pay the judgment debt within a
25 reasonable time, the court may foreclose the lien and order the sale of the transferable interest. The purchaser
26 at the foreclosure sale only obtains the transferable interest, does not thereby become a member, and is subject
27 to [section 39].

28 (4) At any time before foreclosure under subsection (3), the member or transferee whose transferable
29 interest is subject to a charging order under subsection (1) may extinguish the charging order by satisfying the
30 judgment and filing a certified copy of the satisfaction with the court that issued the charging order.

(5) At any time before foreclosure under subsection (3), a limited liability company or one or more members whose transferable interests are not subject to the charging order may pay to the judgment creditor the full amount due under the judgment and thereby succeed to the rights of the judgment creditor, including the charging order.

(6) This chapter does not deprive any member or transferee of the benefit of any exemption laws applicable to the member's or transferee's transferable interest.

(7) This section provides the exclusive remedy by which a person seeking to enforce a judgment against a member or transferee may, in the capacity of judgment creditor, satisfy the judgment from the judgment debtor's transferable interest.

NEW SECTION. **Section 41. Power of personal representative of deceased member.** If a member dies, the deceased member's personal representative or other legal representative may exercise the rights of a transferee provided in [section 39(3)] and, for the purposes of settling the estate, the rights of a current member under [section 31].

Section 42. Section 35-8-803, MCA, is amended to read:

"35-8-803. Events causing member's dissociation. A ~~member~~ person is dissociated from a limited liability company ~~upon the occurrence of any of the following events when:~~

(1) ~~the company's having~~ company has notice of the ~~member's~~ person's express will to withdraw ~~upon the date of notice or on a later date if specified by the member~~ as a member, but, if the person specified a withdrawal date later than the date the company had notice, on that later date;

(2) an event ~~agreed to~~ stated in the operating agreement as causing the ~~member's~~ person's dissociation occurs;

(3) ~~upon transfer of all of a member's distributional interest, other than a transfer for security purposes or pursuant to a court order charging the member's distributional interest that has not been foreclosed;~~

~~(4)(3)~~ the member's expulsion person is expelled as a member pursuant to the operating agreement;

~~(5)(4)~~ the member's expulsion person is expelled as a member by unanimous ~~vote~~ consent of the other members if:

(a) it is unlawful to carry on the company's ~~business~~ activities with the person as a member;

(b) there has been a transfer of ~~substantially~~ all of the member's distributional person's transferable

1 interest; in the company other than;

2 (i) a transfer for security purposes; or

3 (ii) ~~pursuant to a court a charging~~ order charging the member's distributional interest, which under
4 [section 40] that has not been foreclosed;

5 (c) the person is a corporation and, within 90 days after the company notifies ~~a corporate member~~ the
6 person that it will be expelled because it the person has filed a certificate of dissolution or the equivalent, its
7 charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its
8 incorporation, the ~~member fails to obtain a revocation of the~~ certificate of dissolution has not been revoked or a
9 ~~reinstatement of its charter or its right to conduct business~~ has not been reinstated; or

10 (d) the person is a partnership or a limited liability company that ~~is a member~~ has been dissolved; and
11 its business is being wound up;

12 ~~(6)(5)~~ on application by the company or another member, the ~~member's expulsion~~ the person is expelled
13 as a member by judicial ~~determination~~ order because the ~~member~~ person:

14 (a) has engaged in or is engaging in wrongful conduct that has adversely and materially affected or will
15 adversely and materially affect the company's business activities;

16 (b) has willfully or persistently committed or is willfully and persistently committing a material breach of
17 the operating agreement or ~~of a duty owed to the company or the other members~~ the person's duties and
18 obligations under 35-8-310; or

19 (c) has engaged in or is engaging in conduct relating to the company's business activities that makes
20 it not reasonably practicable to carry on the business activities with the person as a member;

21 (6) in the case of a person who is an individual:

22 (a) the person dies; or

23 (b) in a member-managed limited liability company:

24 (i) a guardian or general conservator for the person is appointed; or

25 (ii) there is a judicial order that the person has otherwise become incapable of performing the person's
26 duties as a member under this chapter or the operating agreement;

27 (7) ~~the member's~~ in a member-managed limited liability company, the person:

28 (a) ~~becoming~~ becomes a debtor in bankruptcy;

29 (b) ~~executing~~ executes an assignment for the benefit of creditors; or

30 (c) ~~seeking~~ seeks, consenting consents to, or acquiescing acquiesces in the appointment of a trustee,

receiver, or liquidator of ~~all the person~~ or substantially all of the ~~member's person's~~ property; or

~~(d) failing, within 90 days after the appointment, to have vacated or stayed the appointment of a trustee, receiver, or liquidator of the member or of all or substantially all of the member's property obtained without the member's consent or acquiescence or failing within 90 days after the expiration of stay to have the appointment vacated;~~

~~_____ (8) in the case of a member who is an individual:~~

~~_____ (a) the member's death;~~

~~_____ (b) the appointment of a guardian or general conservator for the member; or~~

~~_____ (c) a judicial determination that the member has otherwise become incapable of performing the member's duties under the operating agreement;~~

~~(9)(8) in the case of a member person that is a trust or is acting as a member by virtue of being a trustee of a trust, distribution of the trust's entire rights to receive distributions from transferable interest in the company; except that this subsection does not apply to the substitution of a successor trustee is distributed;~~

~~(10)(9) in the case of a member person that is an estate or is acting as a member by virtue of being a personal representative of an estate, distribution of the estate's entire rights to receive distributions from the company, but not merely the substitution of a successor personal representative transferable interest in the company is distributed; or~~

~~(10) in the case of a member that is not an individual, partnership, limited liability company, corporation, trust, or estate, the termination of the member;~~

~~(11) the company participates in a merger under part 12 if:~~

~~(a) the company is not the surviving entity; or~~

~~(b) otherwise as a result of the merger, the person ceases to be a member;~~

~~(12) the company participates in a conversion under part 12;~~

~~(13) the company participates in a domestication under part 12 if, as a result of the domestication, the person ceases to be a member; or~~

~~(11)(14) termination of the existence of a member if the member is not an individual, estate, or trust other than a business trust the company terminates."~~

Section 43. Section 35-8-804, MCA, is amended to read:

"35-8-804. Member's power to dissociate -- wrongful dissociation. (1) ~~Unless otherwise provided~~

~~in the operating agreement, a member~~ A person has the power to dissociate from a limited liability company as a member at any time, rightfully or wrongfully, pursuant to 35-8-803(1).

~~(2) If the operating agreement has not eliminated a member's power to dissociate, the member's~~ A person's dissociation from a limited liability company is wrongful only if the dissociation:

(a) it is in breach of an express provision of the agreement; or

(b) occurs before the ~~expiration of the specified term of a term~~ termination of the company and:

(i) the ~~member person~~ person withdraws by express will;

(ii) the ~~member person~~ person is expelled as a member by judicial determination under ~~35-8-803(6)~~ 35-8-803(5);

(iii) the ~~member person~~ person is dissociated under 35-8-803(7)(a) by becoming a debtor in bankruptcy; or

(iv) in the case of a ~~member person~~ person that is not an individual, trust, other than a business trust, or estate, the ~~member person~~ person is expelled or otherwise dissociated as a member because it willfully dissolved or terminated its existence.

(3) A ~~member person~~ person that wrongfully dissociates from a limited liability company as a member is liable to the limited liability company and, subject to [section 62], to the other members for damages caused by the dissociation. The liability is in addition to any other debt, obligation, or other liability of the member to the company or to the other members.

~~(4) If a limited liability company does not dissolve and wind up its business as a result of a member's wrongful dissociation under subsection (2), damages sustained by the company for the wrongful dissociation must be offset against distributions otherwise due the member after the dissociation."~~

Section 44. Section 35-8-805, MCA, is amended to read:

"35-8-805. Effect of member's person's dissociation as member. (1) Upon a member's dissociation:

~~—— (a) in an at-will company, the company shall cause the dissociated member's distributional interest to be purchased as provided under 35-8-808 and 35-8-809; and~~

~~—— (b) in a term company:~~

~~—— (i) if the company dissolves and winds up its business on or before the expiration of its specified term, part 9 of this chapter applies to determine the dissociated member's rights to distributions; and~~

~~—— (ii) if the company does not dissolve and wind up its business on or before the expiration of its specified term, the company shall ensure that the dissociated member's distributional interest is purchased under 35-8-808 and 35-8-809 on the date that was specified for the expiration of the term at the time of the member's dissociation.~~

~~————(2)(1) Upon a member's dissociation from~~ When a person is dissociated as a member of a limited liability company:

(a) ~~the member's~~ person's right to participate in the management and conduct of the company's ~~business activities~~ terminates, ~~except as otherwise provided in 35-8-903, and the member ceases to be a member and must be treated the same as a transferee of a member;~~

~~(b) the member's duty of loyalty under 35-8-310(2)(c) terminates; and~~

~~————(c) the member's duty of loyalty under 35-8-310(2)(a) and (2)(b) and duty of care under 35-8-310(3) continue only with regard to matters arising and events occurring before the member's dissociation, unless the member participates in winding up the company's business pursuant to 35-8-903.~~

(b) if the company is member-managed, the person's fiduciary duties as a member end with regard to matters arising and events occurring after the person's dissociation; and

(c) subject to [section 41] and part 12, any transferable interest owned by the person immediately before dissociation in the person's capacity as a member is owned by the person solely as a transferee.

(2) A person's dissociation as a member of a limited liability company does not of itself discharge the person from any debt, obligation, or other liability to the company or the other members that the person incurred while a member."

Section 45. Section 35-8-901, MCA, is amended to read:

"35-8-901. Dissolution Events causing dissolution. (1) A limited liability company is dissolved and its ~~affairs~~ activities must be wound up ~~when one~~ upon the occurrence of the following ~~occurs~~:

(a) ~~at the time or upon the occurrence of events specified in writing in the articles of organization or operating agreement~~ an event or circumstance that the operating agreement states causes dissolution;

(b) the consent of the number or percentage all of the members specified in the operating agreement;

(c) ~~an event that makes it unlawful for all or substantially all of the business of the company to be continued, but any cure of illegality within 90 days after notice to the company of the event is effective retroactively to the date of the event for purposes of this section;~~

~~————(d) the expiration of the term specified in the articles of organization; or~~

~~————(e) entry of a decree of judicial dissolution under 35-8-902~~ the passage of 90 consecutive days during which the company has no members;

(d) on application by a member, the entry by a district court of an order dissolving the company on the

1 grounds that:

2 (i) the conduct of all or substantially all of the company's activities is unlawful; or

3 (ii) it is not reasonably practicable to carry on the company's activities in conformity with the certificate
4 of organization and the operating agreement; or

5 (e) on application by a member, the entry by the district court of an order dissolving the company on the
6 grounds that the managers or those members in control of the company:

7 (i) have acted, are acting, or will act in a manner that is illegal or fraudulent; or

8 (ii) have acted or are acting in a manner that is oppressive and was, is, or will be directly harmful to the
9 applicant.

10 ~~(2) Subject to subsection (3), a limited liability company continues after dissolution only for the purpose~~
11 ~~of winding up its business.~~

12 ~~—— (3) At any time after the dissolution of a limited liability company and before the winding up of its~~
13 ~~business is completed, the members, including a dissociated member whose dissociation caused the dissolution,~~
14 ~~may unanimously waive the right to have the company's business wound up and the company terminated. In that~~
15 ~~case:~~

16 ~~—— (a) the limited liability company resumes carrying on its business as if dissolution had never occurred;~~
17 ~~and any liability incurred by the company or a member after the dissolution and before the waiver is determined~~
18 ~~as if the dissolution had never occurred; and~~

19 ~~—— (b) the rights of a third party accruing under the provisions of 35-8-904(1) or arising out of conduct by~~
20 ~~the third party in reliance on the dissolution before the third party knew or received a notification of the waiver are~~
21 ~~not adversely affected.~~

22 (2) In a proceeding brought under subsection (1)(e), the court may order a remedy other than dissolution."

23
24 **NEW SECTION. Section 46. Winding up.** (1) A dissolved limited liability company shall wind up its
25 activities, and the company continues after dissolution only for the purpose of winding up.

26 (2) In winding up its activities, a limited liability company:

27 (a) shall discharge the company's debts, obligations, or other liabilities, settle and close the company's
28 activities, and marshal and distribute the assets of the company; and

29 (b) may:

30 (i) deliver to the secretary of state for filing a statement of dissolution stating the name of the company

1 and that the company is dissolved;

2 (ii) preserve the company activities and property as a going concern for a reasonable time;

3 (iii) prosecute and defend actions and proceedings, whether civil, criminal, or administrative;

4 (iv) transfer the company's property;

5 (v) settle disputes by mediation or arbitration;

6 (vi) deliver to the secretary of state for filing a statement of termination stating the name of the company

7 and that the company is terminated; and

8 (vii) perform other acts necessary or appropriate to the winding up.

9 (3) If a dissolved limited liability company has no members, the legal representative of the last person
10 to have been a member may wind up the activities of the company. If the person does so, the person has the
11 powers of a sole manager under 35-8-307(3) and is considered to be a manager for the purposes of
12 35-8-304(1)(b).

13 (4) If the legal representative under subsection (3) declines or fails to wind up the company's activities,
14 a person may be appointed to do so by the consent of transferees owning a majority of the rights to receive
15 distributions as transferees at the time the consent is to be effective. A person appointed under this subsection:

16 (a) has the powers of a sole manager under 35-8-307(3) and is considered to be a manager for the
17 purposes of 35-8-304(1)(b); and

18 (b) shall promptly deliver to the secretary of state for filing an amendment to the company's certificate
19 of organization to:

20 (i) state that the company has no members;

21 (ii) state that the person has been appointed pursuant to this subsection (4) to wind up the company; and

22 (iii) provide the street and mailing addresses of the person.

23 (5) The district court may order judicial supervision of the winding up of a dissolved limited liability
24 company, including the appointment of a person to wind up the company's activities:

25 (a) on application of a member if the applicant establishes good cause;

26 (b) on the application of a transferee if:

27 (i) the company does not have any members;

28 (ii) the legal representative of the last person to have been a member declines or fails to wind up the
29 company's activities; and

30 (iii) within a reasonable time following the dissolution a person has not been appointed pursuant to

1 subsection (4); or

2 (c) in connection with a proceeding under 35-8-901(1)(d) or (1)(e).

4 **Section 47.** Section 35-8-908, MCA, is amended to read:

5 **"35-8-908. Known claims against dissolved or terminated limited liability companies.** (1) ~~A~~ Except
6 as otherwise provided in subsection (4), a dissolved or terminated limited liability company may dispose of the
7 known claims against it by following the procedure described in this section give notice of a known claim under
8 subsection (2), which has the effect as provided in subsection (3).

9 (2) ~~The A~~ dissolved or terminated limited liability company ~~shall~~ may in a record notify its known
10 claimants ~~in writing of the dissolution or termination at any time after the effective date of the dissolution or~~
11 ~~termination.~~ The ~~written~~ notice must:

12 (a) ~~describe~~ specify the information ~~that must~~ required to be included in a claim;

13 (b) provide a mailing address ~~where a~~ to which the claim may is to be sent;

14 (c) state the deadline for receipt of the claim, which may not be less than 120 days ~~from the later of the~~
15 effective after the date of the written notice or the filing of the articles of termination pursuant to 35-8-906, by
16 which the dissolved or terminated limited liability company must receive the claim is received by the claimant; and

17 (d) state that the claim will be barred if not received by the deadline.

18 (3) A claim against the dissolved or terminated limited liability company is barred if the requirements of
19 subsection (2) are not met and:

20 (a) ~~if a claimant who was given written notice under subsection (2) does not deliver the claim to the~~
21 ~~dissolved or terminated limited liability company~~ is not received by the deadline; or

22 (b) ~~if a claimant whose the claim was is timely received but rejected by the dissolved or terminated~~
23 ~~limited liability company does not commence a proceeding to enforce the claim within 90 days from the effective~~
24 ~~date of the rejection notice;~~

25 (i) the company causes the claimant to receive a notice in a record stating that the claim is rejected and
26 will be barred unless the claimant commences an action against the company to enforce the claim within 90 days
27 after the claimant receives the notice; and

28 (ii) the claimant does not commence the required action within the 90 days.

29 (4) ~~For purposes of this section, "claim" This section does not include a contingent liability or apply to~~
30 a claim based on an event occurring after the effective date of the dissolution or termination a liability that is on

1 that date contingent."

2
3 **Section 48.** Section 35-8-909, MCA, is amended to read:

4 **"35-8-909. ~~Unknown~~ Other claims against dissolved or terminated limited liability companies.** (1)

5 Subject to 35-8-908 and subsections (2) through (5) of this section, the dissolution or termination of a limited
6 liability company, including dissolution by the expiration of its term, does not take away or impair any remedy
7 available to or against the limited liability company or its members or managers for any claim or right, whether
8 or not the claim or right existed or accrued prior to dissolution or termination. A proceeding by or against the
9 limited liability company may be prosecuted or defended by the limited liability company in its name. The
10 members and managers have power to take action as appropriate to protect the remedy, right, or claim:

11 ~~———(2) A dissolved or terminated limited liability company may publish notice of its dissolution or termination~~
12 ~~and request that persons having claims against it present the claims in accordance with the notice. A dissolved~~
13 ~~limited liability company may publish notice of its dissolution and request persons having claims against the~~
14 ~~company to present them in accordance with the notice.~~

15 ~~(3)~~(2) The notice authorized by subsection (1) must:

16 (a) be published at least once in a newspaper of general circulation in the county in this state in which
17 the dissolved or terminated limited liability company's principal office is located or, if there is none in this state,
18 then in the county in which its designated office is or was last located;

19 (b) describe the information required to be contained in a claim and provide a mailing address to which
20 the claim is to be sent; and

21 (c) state that a claim against the limited liability company is barred unless a proceeding to enforce the
22 claim is commenced within 5 years after publication of the notice.

23 ~~(4)~~(3) If a dissolved or terminated limited liability company publishes a notice in accordance with
24 subsection ~~(3)~~ (2), the claim of each of the following claimants is barred unless the claimant commences a
25 proceeding to enforce the claim against the dissolved or terminated company within 5 years after the publication
26 date of the notice, the claim of each of the following claimants is barred:

27 (a) a claimant who did not receive written notice under 35-8-908;

28 (b) a claimant whose claim was timely sent to the dissolved or terminated company but not acted on;
29 and

30 (c) a claimant whose claim is contingent ~~on~~ at, or based on an event occurring after, the effective date

of dissolution ~~or termination~~.

~~(5)(4)~~ A claim not barred under this section may be enforced:

(a) against ~~the a~~ dissolved ~~or terminated~~ limited liability company, to the extent of its undistributed assets;

or

(b) if the assets of the company have been distributed ~~in liquidation~~ after dissolution, against a member ~~or transferee of the dissolved or terminated company~~ to the extent of ~~the member's~~ that person's proportionate share of the claim or of the company's assets distributed to the member ~~or transferee in liquidation~~ after dissolution, whichever is less, but a ~~member's~~ person's total liability for all claims under this ~~section may~~ subsection (4) does not exceed the total amount of assets distributed to the ~~member~~ person after dissolution."

NEW SECTION. Section 49. Administrative dissolution. (1) The secretary of state may dissolve a limited liability company administratively if the company does not:

(a) pay, within 60 days after the due date, any fee, tax, or penalty due to the secretary of state under this chapter or under law other than this chapter; or

(b) deliver, within 60 days after the due date, its annual report to the secretary of state.

(2) If the secretary of state determines that a ground exists for administratively dissolving a limited liability company, the secretary of state shall file a record of the determination and serve the company with a copy of the filed record.

(3) If within 60 days after service of the copy pursuant to subsection (2) a limited liability company does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist, the secretary of state shall dissolve the company administratively by preparing, signing, and filing a declaration of dissolution that states the grounds for dissolution. The secretary of state shall serve the company with a copy of the filed declaration.

(4) A limited liability company that has been administratively dissolved continues in existence but, subject to 35-8-912, may carry on only activities necessary to wind up its activities and liquidate its assets under [sections 46 and 52] and to notify claimants under 35-8-908 and 35-8-909.

(5) The administrative dissolution of a limited liability company does not terminate the authority of its agent for service of process.

Section 50. Section 35-8-912, MCA, is amended to read:

"35-8-912. Reinstatement following administrative dissolution. (1) A limited liability company that has been administratively dissolved may apply to the secretary of state for reinstatement within 5 2 years after the effective date of dissolution. ~~The applicant shall file an official application.~~ The application must be delivered to the secretary of state for filing and state:

- (a) ~~recite~~ the name of the company and the effective date of its ~~administrative~~ dissolution;
- (b) ~~state~~ that the ~~ground~~ grounds for dissolution ~~either~~ did not exist or ~~has~~ have been eliminated; and
- (c) ~~state~~ that the company's name satisfies the requirements of 35-8-103;
- ~~—— (d) contain a certificate from the department of revenue reciting that all taxes owed by the company have been paid; and~~
- ~~—— (e) include all annual reports not yet filed with the secretary of state.~~

(2) If the secretary of state determines that ~~the~~ an application under subsection (1) contains the required information ~~required by subsection (1)~~ and that the information is correct, the secretary of state shall ~~cancel the certificate of dissolution,~~ prepare a certificate declaration of reinstatement that recites states this determination ~~and the effective date of reinstatement,~~ sign and file the original of the certificate declaration, and serve the limited liability company with a copy ~~of the certificate.~~

(3) When a reinstatement ~~is~~ becomes effective, it relates back to and takes effect as of the effective date of the administrative dissolution, and the limited liability company may resume its business activities as if the ~~administrative~~ dissolution had not occurred."

Section 51. Section 35-8-913, MCA, is amended to read:

"35-8-913. Appeal from denial of reinstatement. (1) If the secretary of state ~~denies~~ rejects a limited liability company's application for reinstatement following administrative dissolution, the secretary of state shall prepare, sign, and file a notice that explains the reason for rejection and serve the company with a ~~record that~~ explains the reason or reasons for the denial copy of the notice.

(2) ~~The~~ Within 30 days after service of a notice of rejection of reinstatement under subsection (1), a limited liability company may appeal from the denial rejection of reinstatement ~~to a~~ by petitioning the district court ~~within 30 days after service of the notice of denial to set aside the dissolution.~~ The company shall ~~appeal by~~ petitioning the court to set aside the dissolution and attaching to the petition copies petition must be served on the secretary of state and contain a copy of the secretary of state's certificate declaration of dissolution, the company's application for reinstatement, and the secretary of state's notice of ~~denial~~ rejection.

(3) The court may ~~summarily~~ order the secretary of state to reinstate ~~the a~~ dissolved limited liability company or ~~may~~ take other action that the court considers appropriate.

~~(4) The court's final decision may be appealed as in other civil proceedings."~~

NEW SECTION. Section 52. Distribution of assets in winding up limited liability company's actions. (1) In winding up its activities, a limited liability company shall apply its assets to discharge its obligations to creditors, including members that are creditors.

(2) After a limited liability company complies with subsection (1), any surplus must be distributed in the following order, subject to any charging order in effect under [section 40]:

(a) to each person owning a transferable interest that reflects contributions made by a member and not previously returned, an amount equal to the value of the unreturned contributions; and

(b) in equal shares among members and dissociated members, except to the extent necessary to comply with any transfer effective under [section 39].

(3) If a limited liability company does not have sufficient surplus to comply with subsection (2)(a), any surplus must be distributed among the owners of transferable interests in proportion to the value of their respective unreturned contributions.

(4) All distributions made under subsections (2) and (3) must be paid in money.

NEW SECTION. Section 53. Governing law. (1) The law of the state or other jurisdiction under which a foreign limited liability company is formed governs:

(a) the internal affairs of the company; and

(b) the liability of a member as member and a manager as manager for the debts, obligations, or other liabilities of the company.

(2) A foreign limited liability company may not be denied a certificate of authority by reason of any difference between the law of the jurisdiction under which the company is formed and the law of this state.

(3) A certificate of authority does not authorize a foreign limited liability company to engage in any activities or exercise any power that a limited liability company may not engage in or exercise in this state.

NEW SECTION. Section 54. Application for certificate of authority. (1) A foreign limited liability company may apply for a certificate of authority to transact business in this state by delivering an application to

1 the secretary of state for filing. The application must state:

2 (a) the name of the company and, if the name does not comply with 35-8-103, an alternate name adopted
3 pursuant to [section 57(1)];

4 (b) the name of the state or other jurisdiction under whose law the company is formed;

5 (c) the street and mailing addresses of the company's principal office and, if the law of the jurisdiction
6 under which the company is formed requires the company to maintain an office in that jurisdiction, the street and
7 mailing addresses of the required office; and

8 (d) the name and street and mailing addresses of the company's initial agent for service of process in
9 this state.

10 (2) A foreign limited liability company shall deliver with a completed application under subsection (1) a
11 certificate of existence or a record of similar import signed by the secretary of state or other official having custody
12 of the company's publicly filed records in the state or other jurisdiction under whose law the company is formed.

13
14 **NEW SECTION. Section 55. Activities not constituting transacting business.** (1) Activities of a
15 foreign limited liability company that do not constitute transacting business in this state within the meaning of part
16 10 include:

17 (a) maintaining, defending, or settling an action or proceeding;

18 (b) carrying on any activity concerning its internal affairs, including holding meetings of its members or
19 managers;

20 (c) maintaining accounts in financial institutions;

21 (d) maintaining offices or agencies for the transfer, exchange, and registration of the company's own
22 securities or maintaining trustees or depositories with respect to those securities;

23 (e) selling through independent contractors;

24 (f) soliciting or obtaining orders, whether by mail or electronic means or through employees or agents
25 or otherwise, if the orders require acceptance outside this state before they become contracts;

26 (g) creating or acquiring indebtedness, mortgages, or security interests in real or personal property;

27 (h) securing or collecting debts or enforcing mortgages or other security interests in property securing
28 the debts and holding, protecting, or maintaining property so acquired;

29 (i) conducting an isolated transaction that is completed within 30 days and is not in the course of similar
30 transactions; and

(j) transacting business in interstate commerce.

(2) For purposes of part 10, the ownership in this state of income-producing real property or tangible personal property, other than property excluded under subsection (1), constitutes transacting business in this state.

(3) This section does not apply in determining the contacts or activities that may subject a foreign limited liability company to service of process, taxation, or regulation under a law of this state other than this chapter.

NEW SECTION. Section 56. Filing of certificate of authority. Unless the secretary of state determines that an application for a certificate of authority does not comply with the filing requirements of this chapter, the secretary of state, upon payment of all filing fees, shall file the application of a foreign limited liability company, prepare, sign, and file a certificate of authority to transact business in this state, and send a copy of the filed certificate, together with a receipt for the fees, to the company or its representative.

NEW SECTION. Section 57. Noncomplying name of foreign limited liability company. (1) A foreign limited liability company whose name does not comply with 35-8-103 may not obtain a certificate of authority until it adopts, for the purpose of transacting business in this state, an alternate name that complies with 35-8-103. A foreign limited liability company that adopts an alternate name under this subsection and obtains a certificate of authority with the alternate name need not comply with Title 30, chapter 13, part 2. After obtaining a certificate of authority with an alternate name, a foreign limited liability company shall transact business in this state under the alternate name unless the company is authorized under Title 30, chapter 13, part 2, to transact business in this state under another name.

(2) If a foreign limited liability company authorized to transact business in this state changes its name to one that does not comply with 35-8-103, it may not thereafter transact business in this state until it complies with subsection (1) and obtains an amended certificate of authority.

NEW SECTION. Section 58. Revocation of certificate of authority. (1) A certificate of authority of a foreign limited liability company to transact business in this state may be revoked by the secretary of state in the manner provided in subsections (2) and (3) if the company does not:

(a) pay, within 60 days after the due date, any fee, tax, or penalty due to the secretary of state under this chapter or a law other than this chapter;

1 (b) deliver, within 60 days after the due date, its annual report required under 35-8-208;

2 (c) appoint and maintain an agent for service of process as required by 35-7-105; or

3 (d) deliver for filing a statement of a change under 35-7-108 through 35-8-110 within 30 days after a
4 change has occurred in the name or address of the agent.

5 (2) To revoke a certificate of authority of a foreign limited liability company, the secretary of state shall
6 prepare, sign, and file a notice of revocation and send a copy to the company's agent for service of process in
7 this state or, if the company does not appoint and maintain a proper agent in this state, to the company's
8 designated office. The notice must state:

9 (a) the revocation's effective date, which must be at least 60 days after the date the secretary of state
10 sends the copy; and

11 (b) the grounds for revocation under subsection (1).

12 (3) The authority of a foreign limited liability company to transact business in this state ceases on the
13 effective date of the notice of revocation unless before that date the company cures each ground for revocation
14 stated in the notice filed under subsection (2). If the company cures each ground, the secretary of state shall file
15 a record so stating.

16
17 **NEW SECTION. Section 59. Cancellation of certificate of authority.** To cancel its certificate of
18 authority to transact business in this state, a foreign limited liability company shall deliver to the secretary of state
19 for filing a notice of cancellation stating the name of the company and that the company desires to cancel its
20 certificate of authority. The certificate is canceled when the notice becomes effective.

21
22 **NEW SECTION. Section 60. Effect of failure to have certificate of authority.** (1) A foreign limited
23 liability company transacting business in this state may not maintain an action or proceeding in this state unless
24 it has a certificate of authority to transact business in this state.

25 (2) The failure of a foreign limited liability company to have a certificate of authority to transact business
26 in this state does not impair the validity of a contract or act of the company or prevent the company from
27 defending an action or proceeding in this state.

28 (3) A member or manager of a foreign limited liability company is not liable for the debts, obligations, or
29 other liabilities of the company solely because the company transacted business in this state without a certificate
30 of authority.

(4) If a foreign limited liability company transacts business in this state without a certificate of authority or cancels its certificate of authority, it appoints the secretary of state as its agent for service of process for rights of action arising out of the transaction of business in this state.

NEW SECTION. Section 61. Action by attorney general. The attorney general may maintain an action to enjoin a foreign limited liability company from transacting business in this state in violation of this chapter.

NEW SECTION. Section 62. Direct action by member. (1) Subject to subsection (2), a member may maintain a direct action against another member, a manager, or the limited liability company to enforce the member's rights and otherwise protect the member's interests, including rights and interests under the operating agreement or this chapter or arising independently of the membership relationship.

(2) A member maintaining a direct action under this section shall plead and prove an actual or threatened injury that is not solely the result of an injury suffered or threatened to be suffered by the limited liability company.

Section 63. Section 35-8-1104, MCA, is amended to read:

"35-8-1104. Derivative actions -- proper plaintiff -- pleading -- expenses action. (1) A member of a limited liability company may maintain an a derivative action in the to enforce a right of the a limited liability company if:

(1) the members or managers having authority to bring the action have refused to commence the action member first makes a demand on the other members in a member-managed limited liability company or the managers of a manager-managed limited liability company requesting that they cause the company to bring an action to enforce the right and the managers or other members do not bring the action within a reasonable time;

or

(2) an effort to cause those members or managers to commence the action is not likely to succeed a demand under subsection (1) would be futile.

~~(2) In a derivative action for a limited liability company, the plaintiff must be a member of the company when the action is commenced and:~~

~~—— (a) must have been a member at the time of the transaction of which the plaintiff complains; or~~

~~—— (b) the plaintiff's status as a member must have devolved upon the plaintiff by operation of law or pursuant to the terms of the operating agreement from a person who was a member at the time of the transaction.~~

1 ~~—— (3) In a derivative action for a limited liability company, the complaint must set forth with particularity the~~
2 ~~effort of the plaintiff to secure initiation of the action by a member or manager or the reasons for not making the~~
3 ~~effort.~~

4 ~~—— (4) If a derivative action for a limited liability company is successful, in whole or in part, or if anything is~~
5 ~~received by the plaintiff as a result of a judgment, compromise, or settlement of an action or claim, the court may~~
6 ~~award the plaintiff reasonable expenses, including reasonable attorney fees, and shall direct the plaintiff to remit~~
7 ~~to the limited liability company the remainder of the proceeds received."~~

8
9 **NEW SECTION. Section 64. Proper plaintiff.** (1) Except as otherwise provided in subsection (2), a
10 derivative action under 35-8-1104 may be maintained only by a person that is a member at the time the action
11 is commenced and remains a member while the action continues.

12 (2) If the sole plaintiff in a derivative action dies while the action is pending, the court may permit another
13 member of the limited liability company to be substituted as plaintiff.

14
15 **NEW SECTION. Section 65. Pleading.** In a derivative action under 35-8-1104, the complaint must state
16 with particularity:

17 (1) the date and content of the plaintiff's demand and the response to the demand by the managers or
18 other members; or

19 (2) if a demand has not been made, the reasons a demand under 35-8-1104(1) would be futile.

20
21 **NEW SECTION. Section 66. Special litigation committee.** (1) If a limited liability company is named
22 as or made a party in a derivative proceeding, the company may appoint a special litigation committee to
23 investigate the claims asserted in the proceeding and determine whether pursuing the action is in the best
24 interests of the company. If the company appoints a special litigation committee, on motion by the committee
25 made in the name of the company, except for good cause shown, the court shall stay discovery for the time
26 reasonably necessary to permit the committee to make its investigation. This subsection does not prevent the
27 court from enforcing a person's right to information under [section 31] or, for good cause shown, granting
28 extraordinary relief in the form of a temporary restraining order or preliminary injunction.

29 (2) A special litigation committee may be composed of one or more disinterested and independent
30 individuals, who may be members.

(3) A special litigation committee may be appointed:

(a) in a member-managed limited liability company:

(i) by the consent of a majority of the members not named as defendants or plaintiffs in the proceeding;

and

(ii) if all members are named as defendants or plaintiffs in the proceeding, by a majority of the members named as defendants; or

(b) in a manager-managed limited liability company:

(i) by a majority of the managers not named as defendants or plaintiffs in the proceeding; and

(ii) if all managers are named as defendants or plaintiffs in the proceeding, by a majority of the managers named as defendants.

(4) After appropriate investigation, a special litigation committee may determine that it is in the best interests of the limited liability company that the proceeding:

(a) continue under the control of the plaintiff;

(b) continue under the control of the committee;

(c) be settled on terms approved by the committee; or

(d) be dismissed.

(5) After making a determination under subsection (4), a special litigation committee shall file with the court a statement of its determination and its report supporting its determination, giving notice to the plaintiff. The court shall determine whether the members of the committee were disinterested and independent and whether the committee conducted its investigation and made its recommendation in good faith, independently, and with reasonable care, with the committee having the burden of proof. If the court finds that the members of the committee were disinterested and independent and that the committee acted in good faith, independently, and with reasonable care, the court shall enforce the determination of the committee. Otherwise, the court shall dissolve the stay of discovery entered under subsection (1) and allow the action to proceed under the direction of the plaintiff.

NEW SECTION. Section 67. Proceeds and expenses. (1) Except as otherwise provided in subsection

(2):

(a) any proceeds or other benefits of a derivative action under 35-8-1104, whether by judgment, compromise, or settlement, belong to the limited liability company and not to the plaintiff; and

(b) if the plaintiff receives any proceeds, the plaintiff shall remit them immediately to the company.

(2) If a derivative action under 35-8-1104 is successful in whole or in part, the court may award the plaintiff reasonable expenses, including reasonable attorney fees and costs, from the recovery of the limited liability company.

NEW SECTION. Section 68. Definitions. In part 12:

(1) "Constituent limited liability company" means a constituent organization that is a limited liability company.

(2) "Constituent organization" means an organization that is party to a merger.

(3) "Converted organization" means the organization into which a converting organization converts pursuant to 35-8-1210, 35-8-1211, and [sections 74 and 75].

(4) "Converting limited liability company" means a converting organization that is a limited liability company.

(5) "Converting organization" means an organization that converts into another organization pursuant to 35-8-1210.

(6) "Domesticated company" means the company that exists after a domesticating foreign limited liability company or limited liability company effects a domestication pursuant to [sections 77 through 80].

(7) "Domesticating company" means the company that effects a domestication pursuant to [sections 77 through 80].

(8) "Governing statute" means the statute that governs an organization's internal affairs.

(9) "Organization" means a general partnership, including a limited liability partnership, limited partnership, including a limited liability limited partnership, limited liability company, business trust, corporation, or any other person having a governing statute. The term includes a domestic or foreign organization regardless of whether organized for profit.

(10) "Organizational documents" means:

(a) for a domestic or foreign general partnership, its partnership agreement;

(b) for a limited partnership or foreign limited partnership, its certificate of limited partnership and partnership agreement;

(c) for a domestic or foreign limited liability company, its certificate or articles of organization and operating agreement or comparable records as provided in its governing statute;

(d) for a business trust, its agreement of trust and declaration of trust;

(e) for a domestic or foreign corporation for profit, its articles of incorporation, bylaws, and other agreements among its shareholders that are authorized by its governing statute or comparable records as provided in its governing statute; and

(f) for any other organization, the basic records that create the organization and determine its internal governance and the relations among the persons that own it, have an interest in it, or are members of it.

(11) "Personal liability" means liability for a debt, obligation, or other liability of an organization that is imposed on a person that co-owns, has an interest in, or is a member of the organization:

(a) by the governing statute solely by reason of the person co-owning, having an interest in, or being a member of the organization; or

(b) by the organization's organizational documents under a provision of the governing statute authorizing those documents to make one or more specified persons liable for all or specified debts, obligations, or other liabilities of the organization solely by reason of the person or persons co-owning, having an interest in, or being a member of the organization.

(12) "Surviving organization" means an organization into which one or more other organizations are merged whether the organization preexisted the merger or was created by the merger.

Section 69. Section 35-8-1201, MCA, is amended to read:

"35-8-1201. Merger. (1) ~~Pursuant to a plan of merger approved under subsection (3), a domestic A~~
limited liability company may merge with or into one or more ~~limited liability companies, foreign limited liability~~
~~companies, partnerships, foreign partnerships, limited partnerships, foreign limited partnerships, or other domestic~~
~~or foreign entities~~ constituent organizations pursuant to 35-8-1202, 35-8-1203, [section 70], this section, and a
plan of merger if:

(a) the governing statute of each of the other organizations authorizes the merger;

(b) the merger is not prohibited by the law of a jurisdiction that enacted any of the governing statutes; and

(c) each of the other organizations complies with its governing statute in effecting the merger. ~~In the case~~
~~of a merger with a foreign business entity, the merger must be permitted by the laws of the jurisdiction in which~~
~~the foreign entity is incorporated or organized.~~

(2) A plan of merger must ~~set forth~~ be in a record and must include:

(a) the name and form of each ~~entity that is a party to the merger~~ constituent organization;

(b) ~~the name and form of the surviving entity into which the other entities will merge organization and,~~
if the surviving organization is to be created by the merger, a statement to that effect;

~~(c) the type of organization of the surviving entity;~~

~~———(d) the terms and conditions of the merger, including the manner and basis for converting the interests~~
in each constituent organization into any combination of money, interests in the surviving organization, and other
consideration;

~~(e) the manner and basis for converting the interests of each party to the merger into interests or~~
~~obligations of the surviving entity or into money or other property, in whole or in part; and~~

~~———(f) the street address of the surviving entity's principal place of business~~

(d) if the surviving organization is to be created by the merger, the surviving organization's organizational
documents that are proposed to be in a record; and

(e) if the surviving organization is not to be created by the merger, any amendments to be made by the
merger to the surviving organization's organizational documents that are, or are proposed to be, in a record.

~~(3) A plan of merger must be approved:~~

~~———(a) in the case of a limited liability company that is a party to the merger, by all of the members or by a~~
~~number or percentage of members specified in the operating agreement;~~

~~———(b) in the case of a foreign limited liability company that is a party to the merger, by the vote required for~~
~~approval of a merger by the law of the state or foreign jurisdiction in which the foreign limited liability company~~
~~is organized;~~

~~———(c) in the case of a domestic partnership or domestic limited partnership that is a party to the merger,~~
~~by the vote required for approval of a conversion under 35-8-1210(2); and~~

~~———(d) in the case of any other entities that are parties to the merger, by the vote required for approval of~~
~~a merger by the law of this state or of the state or foreign jurisdiction in which the entity is organized and, in the~~
~~absence of any requirement, by all the owners of interests in the entity.~~

~~———(4) After a plan of merger is approved and before the merger takes effect, the plan may be amended or~~
~~abandoned as provided in the plan.~~

~~———(5) The merger is effective upon the filing of the articles of merger with the secretary of state or at a later~~
~~date as the articles may provide."~~

NEW SECTION. Section 70. Action on plan of merger by constituent limited liability company.

(1) Subject to [section 81], a plan of merger must be consented to by all the members of a constituent limited liability company.

(2) Subject to [section 81] and any contractual rights, after a merger is approved and at any time before articles of merger are delivered to the secretary of state for filing under 35-8-1202, a constituent limited liability company may amend the plan or abandon the merger:

(a) as provided in the plan; or

(b) except as otherwise prohibited in the plan, with the same consent as was required to approve the plan.

Section 71. Section 35-8-1202, MCA, is amended to read:

"35-8-1202. Articles of Filings required for merger -- effective date. (1) After approval of the plan of each constituent organization has approved a merger under 35-8-1201(3), unless the merger is abandoned under 35-8-1201(4); articles of merger must be signed on behalf of:

(a) each constituent limited liability company, as provided in 35-8-204(1); and

(b) each other entity that is a party to the merger and delivered to the secretary of state for filing constituent organization, as provided in its governing statute.

(2) ~~The articles~~ Articles of merger must ~~set forth~~ include:

(a) the name and form of each constituent organization and the jurisdiction of formation or organization of each of the limited liability companies and other entities that are parties to the merger its governing statute;

(b) the name and form of the surviving organization, the jurisdiction of its governing statute, and if the surviving organization is created by the merger, a statement to that effect;

(b)(c) for each limited liability company that is to merge, the date on which its articles of organization were filed with the secretary of state the merger is effective under the governing statute of the surviving organization;

(c) ~~that a plan of merger has been approved and signed by each limited liability company and other entity that is to merge;~~

~~(d) the name and address of the surviving limited liability company or other surviving entity;~~

~~(e) the effective date of the merger;~~

~~(f) if a limited liability company is the surviving entity, the changes in its articles of organization that are necessary by reason of the merger;~~

~~——— (g) if a party to a merger is a foreign limited liability company, the jurisdiction and date of filing of its initial articles of organization and the date when its application for authority was filed by the secretary of state or, if an application has not been filed, a statement to that effect; and~~

~~——— (h) if the surviving entity is not a limited liability company, the agreement that the surviving entity may be served with process in this state and is subject to liability in any action or proceeding for the enforcement of any liability or obligation of any limited liability company previously subject to suit in this state that is to merge and for the enforcement, as provided in this chapter, of the right of members of any limited liability company to receive payment for their interest against the surviving entity; and~~

~~——— (i) the name and address of the registered agent of the surviving entity.~~

(d) if the surviving organization is to be created by the merger:

(i) if it will be a limited liability company, the company's certificate of organization; or

(ii) if it will be an organization other than a limited liability company, the organizational document that creates the organization that is in a public record;

(e) if the surviving organization preexists the merger, any amendments provided for in the plan of merger for the organizational document that created the organization that are in a public record;

(f) a statement as to each constituent organization that the merger was approved as required by the organization's governing statute;

(g) if the surviving organization is a foreign organization not authorized to transact business in this state, the street and mailing addresses of an office that the secretary of state may use for the purposes of 35-8-1203(2); and

(h) any additional information required by the governing statute of any constituent organization.

~~(2) If a foreign limited liability company is the surviving entity of a merger, it may not do business in this state until an application for that authority is filed with the secretary of state.~~

~~——— (3) The surviving limited liability company or other entity shall furnish a copy of the plan of merger, on request and without cost, to any member of any limited liability company or any person holding an interest in any other entity that is subject to the merger.~~

~~——— (4) Articles of merger operate as an amendment to a surviving limited liability company's articles of organization.~~

(3) Each constituent limited liability company shall deliver the articles of merger for filing in the office of the secretary of state.

1 (4) A merger becomes effective under this part:

2 (a) if the surviving organization is a limited liability company, upon the later of:

3 (i) compliance with subsection (3); or

4 (ii) subject to [section 17(3)], as specified in the articles of merger; or

5 (b) if the surviving organization is not a limited liability company, as provided by the governing statute of
6 the surviving organization."

7
8 **Section 72.** Section 35-8-1203, MCA, is amended to read:

9 **"35-8-1203. Effect of merger.** (1) When a merger ~~takes effect~~ becomes effective:

10 (a) the surviving organization continues or comes into existence;

11 ~~(a)(b) the separate existence of each limited liability company and other entity that are a party to the~~
12 ~~merger, other than the surviving constituent organization that merges into the surviving organization ceases to~~
13 ~~exist as a separate entity; terminates;~~

14 ~~(b)(c) all property owned by each of the limited liability companies and other entities that are a party to~~
15 ~~the merger constituent organization that ceases to exist vests in the surviving entity organization;~~

16 ~~(c)(d) all debts, liabilities obligations, and other obligations liabilities of each limited liability company and~~
17 ~~other entity that are a party to the merger become the obligations constituent organization that ceases to exist~~
18 ~~continue as debts, obligations, or other liabilities of the surviving entity organization;~~

19 ~~(d)(e) an action or proceeding pending by or against a limited liability company or other entity that is a~~
20 ~~party to a merger any constituent organization that ceases to exist may be continued as if the merger had not~~
21 ~~occurred or the surviving entity may be substituted as a party to the action or proceeding; and~~

22 ~~(e)(f) except as prohibited by other law, all of the rights, privileges, immunities, powers, and purposes~~
23 ~~of every limited liability company and other entity that are a party to a merger each constituent organization that~~
24 ~~ceases to exist vest in the surviving entity organization;~~

25 (g) except as otherwise provided in the plan of merger, the terms and conditions of the plan of merger
26 take effect;

27 (h) except as otherwise agreed, if a constituent limited liability company ceases to exist, the merger does
28 not dissolve the limited liability company for the purposes of part 7;

29 (i) if the surviving organization is created by the merger:

30 (i) if it is a limited liability company, the certificate of organization becomes effective; or

1 (ii) if it is an organization other than a limited liability company, the organizational document that creates
2 the organization becomes effective; and

3 (j) if the surviving organization preexisted the merger, any amendments provided for in the articles of
4 merger for the organizational document that created the organization become effective.

5 ~~(2) If the surviving foreign entity fails to appoint or maintain an agent designated for service of process~~
6 ~~in this state or if the agent for service of process cannot with reasonable diligence be found, service of process~~
7 ~~may be made on the foreign entity as provided in 35-7-113(2). Service is effected under this subsection at the~~
8 ~~earliest of:~~

9 ~~—— (a) the date on which the company receives the process, notice, or demand;~~

10 ~~—— (b) the date shown on the return receipt, if signed on behalf of the company; or~~

11 ~~—— (c) 5 days after its deposit in the mail, if mailed postpaid and correctly addressed.~~

12 ~~—— (3) A member of the surviving limited liability company is liable for all obligations of a party to the merger~~
13 ~~for which the member was personally liable before the merger.~~

14 ~~—— (4) Unless otherwise agreed, a merger of a limited liability company that is not the surviving entity in the~~
15 ~~merger does not require the limited liability company to wind up its business under this chapter or to pay its~~
16 ~~liabilities and distribute its assets pursuant to this chapter.~~

17 ~~—— (5) Articles of merger serve as articles of dissolution for a limited liability company that is not the surviving~~
18 ~~entity in the merger.~~

19 (2) A surviving organization that is a foreign organization consents to the jurisdiction of the courts of this
20 state to enforce any debt, obligation, or other liability owed by a constituent organization if, before the merger,
21 the constituent organization was subject to suit in this state on the debt, obligation, or other liability. A surviving
22 organization that is a foreign organization and not authorized to transact business in this state appoints the
23 secretary of state as its agent for service of process for the purposes of enforcing a debt, obligation, or other
24 liability under this subsection. Service on the secretary of state under this subsection must be made in the same
25 manner and has the same consequences as in 35-7-113."

26
27 **Section 73.** Section 35-8-1210, MCA, is amended to read:

28 **"35-8-1210. Conversion of partnership or limited partnership to limited liability company.** (1) A
29 ~~partnership or limited partnership may be converted~~ An organization other than a limited liability company or a
30 foreign limited liability company may convert to a limited liability company, and a limited liability company may

1 convert to an organization other than a foreign limited liability company pursuant to this section 35-8-1211,
2 [sections 74 and 75], this section, and a plan of conversion if:

3 (a) the other organization's governing statute authorizes the conversion;

4 (b) the conversion is not prohibited by the law of the jurisdiction that enacted the other organization's
5 governing statute; and

6 (c) the other organization complies with its governing statute in effecting the conversion.

7 ~~(2) The terms and conditions of a conversion of a partnership or limited partnership to a limited liability~~
8 ~~company must be approved by all of the partners or by a number or percentage of the partners required for~~
9 ~~conversion in the partnership agreement:~~

10 ~~——— (3) An agreement of conversion must set forth the terms and conditions of the conversion of the interests~~
11 ~~of partners of a partnership or of a limited partnership, as the case may be, into interests in the converted limited~~
12 ~~liability company or cash or other consideration to be paid or delivered as a result of the conversion of the~~
13 ~~interests of the partners, or a combination of interests, cash, or other consideration:~~

14 ~~(4)(2) After a A plan of conversion is approved under subsection (2), the partnership or limited~~
15 ~~partnership shall file articles of organization and all filing fees in the office of the secretary of state that satisfy the~~
16 ~~requirements of 35-8-202 and that contain must be in a record and must include:~~

17 ~~(a) a statement that the partnership or limited partnership was converted to a limited liability company~~
18 ~~from a partnership or limited partnership;~~

19 ~~——— (b) its former the name and form of the organization before conversion;~~

20 ~~(c) a statement of the number of votes cast by the partners entitled to vote for and against the conversion~~
21 ~~and, if the vote is less than unanimous, the number or percentage required to approve the conversion under~~
22 ~~subsection (2); and~~

23 ~~——— (d) in the case of a limited partnership, a statement that the certificate of limited partnership is to be~~
24 ~~canceled as of the date on which the conversion took effect~~

25 (b) the name and form of the organization after conversion;

26 (c) the terms and conditions of the conversion, including the manner and basis for converting interests
27 in the converting organization into any combination of money, interests in the converted organization, and other
28 consideration; and

29 (d) the organizational documents of the converted organization that are, or are proposed to be, in a
30 record.

~~(5) In the case of a limited partnership, the filing of articles of organization under subsection (4) cancels its certificate of limited partnership as of the date on which the conversion took effect.~~

~~—— (6) A conversion takes effect when the articles of organization are filed in the office of the secretary of state or at any later date specified in the articles of organization.~~

~~—— (7) A general partner who becomes a member of a limited liability company as a result of a conversion remains liable as a partner for any obligation incurred by the partnership or limited partnership before the conversion takes effect.~~

~~—— (8) A general partner's liability for all obligations of the limited liability company incurred after the conversion takes effect is that of a member of the company.~~

~~—— (9) A limited partner who becomes a member as a result of a conversion remains liable for obligations of the limited partnership only to the extent that the limited partner was liable for an obligation incurred by the limited partnership before the conversion takes effect."~~

NEW SECTION. Section 74. Action on plan of conversion by converting limited liability company.

(1) Subject to [section 81], a plan of conversion must be consented to by all the members of a converting limited liability company.

(2) Subject to [section 81] and any contractual rights, after a conversion is approved and at any time before articles of conversion are delivered to the secretary of state for filing under [section 75], a converting limited liability company may amend the plan or abandon the conversion:

(a) as provided in the plan; or

(b) except as otherwise prohibited in the plan, by the same consent as was required to approve the plan.

NEW SECTION. Section 75. Filings required for conversion -- effective date. (1) After a plan of conversion is approved:

(a) a converting limited liability company shall deliver to the secretary of state for filing articles of conversion, which must be signed as provided in 35-8-204(1) and must include:

(i) a statement that the limited liability company has been converted into another organization;

(ii) the name and form of the organization and the jurisdiction of its governing statute;

(iii) the date the conversion is effective under the governing statute of the converted organization;

(iv) a statement that the conversion was approved as required by this chapter;

(v) a statement that the conversion was approved as required by the governing statute of the converted organization; and

(vi) if the converted organization is a foreign organization not authorized to transact business in this state, the street and mailing addresses of an office that the secretary of state may use for the purposes of 35-8-1211(3); and

(b) if the converting organization is not a converting limited liability company, the converting organization shall deliver to the secretary of state for filing a certificate of organization, which must include, in addition to the information required by 35-8-202(2):

(i) a statement that the converted organization was converted from another organization;

(ii) the name and form of that converting organization and the jurisdiction of its governing statute; and

(iii) a statement that the conversion was approved in a manner that complied with the converting organization's governing statute.

(2) A conversion becomes effective:

(a) if the converted organization is a limited liability company, when the certificate of organization takes effect; and

(b) if the converted organization is not a limited liability company, as provided by the governing statute of the converted organization.

Section 76. Section 35-8-1211, MCA, is amended to read:

"35-8-1211. Effect of conversion -- entity unchanged -- part not exclusive. (1) ~~A partnership or limited partnership~~ An organization that has been converted pursuant to this part is for all purposes the same entity that existed before the conversion.

(2) When a conversion takes effect:

(a) all property owned by the converting ~~partnership or limited partnership~~ vests organization remains vested in the limited liability company converted organization;

(b) all debts, ~~liabilities~~ obligations, and other ~~obligations~~ liabilities of the converting ~~partnership or limited partnership~~ organization continue as debts, obligations, or other liabilities of the ~~limited liability company~~ converted organization;

(c) an action or proceeding pending by or against the converting ~~partnership or limited partnership~~ organization may be continued as if the conversion had not occurred;

(d) except as prohibited by ~~other law~~ other than this chapter, all of the rights, privileges, immunities, powers, and purposes of the converting partnership or limited partnership ~~vest~~ organization remain vested in the limited liability company converted organization; and

(e) except as otherwise provided in the ~~agreement plan~~ plan of conversion ~~under 35-8-1210(3)~~, all of the partners of the converting partnership ~~continue as members of the limited liability company~~ the terms and conditions of the plan of conversion take effect; and

(f) except as otherwise agreed, the conversion does not dissolve a converting limited liability company for the purposes of part 7.

~~(3) The provisions of this part do not preclude an entity from being converted or merged under other provisions of law.~~

(3) A converted organization that is a foreign organization consents to the jurisdiction of the courts of this state to enforce any debt, obligation, or other liability for which the converting limited liability company is liable if, before the conversion, the converting limited liability company was subject to suit in this state on the debt, obligation, or other liability. A converted organization that is a foreign organization and not authorized to transact business in this state appoints the secretary of state as its agent for service of process for purposes of enforcing a debt, obligation, or other liability under this subsection. Service on the secretary of state under this subsection must be made in the same manner and has the same consequences as in 35-7-113."

NEW SECTION. Section 77. Domestication. (1) A foreign limited liability company may become a limited liability company pursuant to this section, [sections 78 through 80], and a plan of domestication if:

(a) the foreign limited liability company's governing statute authorizes the domestication;
(b) the domestication is not prohibited by the law of the jurisdiction that enacted the governing statute;
and

(c) the foreign limited liability company complies with its governing statute in effecting the domestication.

(2) A limited liability company may become a foreign limited liability company pursuant to [sections 78 through 80], this section, and a plan of domestication if:

(a) the foreign limited liability company's governing statute authorizes the domestication;
(b) the domestication is not prohibited by the law of the jurisdiction that enacted the governing statute;
and

(c) the foreign limited liability company complies with its governing statute in effecting the domestication.

(3) A plan of domestication must be in a record and must include:

(a) the name of the domesticating company before domestication and the jurisdiction of its governing statute;

(b) the name of the domesticated company after domestication and the jurisdiction of its governing statute;

(c) the terms and conditions of the domestication, including the manner and basis for converting interests in the domesticating company into any combination of money, interests in the domesticated company, and other consideration; and

(d) the organizational documents of the domesticated company that are, or are proposed to be, in a record.

NEW SECTION. Section 78. Action of plan of domestication by domesticating limited liability company. (1) A plan of domestication must be consented to:

(a) by all the members, subject to [section 81], if the domesticating company is a limited liability company; and

(b) as provided in the domesticating company's governing statute if the company is a foreign limited liability company.

(2) Subject to any contractual rights, after a domestication is approved and at any time before articles of domestication are delivered to the secretary of state for filing under [section 79], a domesticating limited liability company may amend the plan or abandon the domestication:

(a) as provided in the plan; or

(b) except as otherwise prohibited in the plan, by the same consent as was required to approve the plan.

NEW SECTION. Section 79. Filings required for domestication -- effective date. (1) After a plan of domestication is approved, a domesticating company shall deliver to the secretary of state for filing articles of domestication, which must include:

(a) a statement, as the case may be, that the company has been domesticated from or into another jurisdiction;

(b) the name of the domesticating company and the jurisdiction of its governing statute;

(c) the name of the domesticated company and the jurisdiction of its governing statute;

(d) the date the domestication is effective under the governing statute of the domesticated company;

(e) if the domesticating company was a limited liability company, a statement that the domestication was approved as required by this chapter;

(f) if the domesticating company was a foreign limited liability company, a statement that the domestication was approved as required by the governing statute of the other jurisdiction; and

(g) if the domesticated company was a foreign limited liability company not authorized to transact business in this state, the street and mailing addresses of an office that the secretary of state may use for the purposes of [section 80(2)].

(2) A domestication becomes effective:

(a) when the certificate of organization takes effect if the domesticated company is a limited liability company; and

(b) according to the governing statute of the domesticated company if the domesticated organization is a foreign limited liability company.

NEW SECTION. Section 80. Effect of domestication. (1) When a domestication takes effect:

(a) the domesticated company is for all purposes the company that existed before the domestication;

(b) all property owned by the domesticating company remains vested in the domesticated company;

(c) all debts, obligations, or other liabilities of the domesticating company continue as debts, obligations, or other liabilities of the domesticated company;

(d) an action or proceeding pending by or against a domesticating company may be continued as if the domestication had not occurred;

(e) except as prohibited by other law, all of the rights, privileges, immunities, powers, and purposes of the domesticating company remain vested in the domesticated company;

(f) except as otherwise provided in the plan of domestication, the terms and conditions of the plan of domestication take effect; and

(g) except as otherwise agreed, the domestication does not dissolve a domesticating limited liability company for the purposes of part 7.

(2) A domesticated company that is a foreign limited liability company consents to the jurisdiction of the courts of this state to enforce any debt, obligation, or other liability owed by the domesticating company if, before the domestication, the domesticating company was subject to suit in this state on the debt, obligation, or other

1 liability. A domesticated company that is a foreign limited liability company and not authorized to transact business
2 in this state appoints the secretary of state as its agent for service of process for purposes of enforcing a debt,
3 obligation, or other liability under this subsection. Service on the secretary of state under this subsection must
4 be made in the same manner and has the same consequences as in 35-7-113.

5 (3) If a limited liability company has adopted and approved a plan of domestication under [section 77]
6 providing for the company to be domesticated in a foreign jurisdiction, a statement surrendering the company's
7 certificate of organization must be delivered to the secretary of state for filing setting forth:

8 (a) the name of the company;

9 (b) a statement that the certificate of organization is being surrendered in connection with the
10 domestication of the company in a foreign jurisdiction;

11 (c) a statement the domestication was approved as required by this chapter; and

12 (d) the jurisdiction of formation of the domesticated foreign limited liability company.
13

14 **NEW SECTION. Section 81. Restrictions on approval of mergers, conversions, and**
15 **domestications.** (1) If a member of a constituent, converting, or domesticating limited liability company will have
16 personal liability with respect to a surviving, converted, or domesticated organization, approval or amendment
17 of a plan of merger, conversion, or domestication are ineffective without the consent of the member unless:

18 (a) the company's operating agreement provides for approval of a merger, conversion, or domestication
19 with the consent of fewer than all the members; and

20 (b) the member has consented to the provision of the operating agreement.

21 (2) A member does not give the consent required by subsection (1) merely by consenting to a provision
22 of the operating agreement that permits the operating agreement to be amended with the consent of fewer than
23 all the members.
24

25 **NEW SECTION. Section 82. Chapter not exclusive.** This chapter does not preclude an entity from
26 being merged, converted, or domesticated under any law other than this chapter.
27

28 **NEW SECTION. Section 83. Relations to electronic signatures in global and national commerce**
29 **act.** This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National
30 Commerce Act, 15 U.S.C. 7001, et seq., but does not modify, limit, or supersede section 101(c) of that act, 15

U.S.C. 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15
U.S.C. 7003(b).

NEW SECTION. Section 84. Application to existing relationships. (1) Before October 1, 2010, this
chapter governs only:

(a) a limited liability company formed on or after [the effective date of this act]; and

(b) except as otherwise provided in subsection (3), a limited liability company formed before [the effective
date of this act] that elects, in the manner provided in its operating agreement or by law for amending the
operating agreement, to be subject to this chapter.

(2) Except as otherwise provided in subsection (3), on and after October 1, 2010, this chapter governs
all limited liability companies.

(3) For the purposes of applying this chapter to a limited liability company formed before [the effective
date of this act]:

(a) the company's articles of organization are considered to be the company's certificate of organization;
and

(b) for the purposes of applying 35-8-102(10) and subject to [section 11(4)], language in the company's
articles of organization designating the company's management structure operates as if that language were in
the operating agreement.

NEW SECTION. Section 85. Repealer. Sections 35-8-108, 35-8-201, 35-8-205, 35-8-209, 35-8-210,
35-8-302, 35-8-306, 35-8-405, 35-8-410, 35-8-411, 35-8-503, 35-8-504, 35-8-601, 35-8-603, 35-8-606, 35-8-701,
35-8-702, 35-8-705, 35-8-707, 35-8-808, 35-8-809, 35-8-811, 35-8-812, 35-8-902, 35-8-903, 35-8-904, 35-8-905,
35-8-906, 35-8-1001, 35-8-1002, 35-8-1003, 35-8-1007, 35-8-1008, 35-8-1009, 35-8-1010, 35-8-1011, 35-8-1012,
35-8-1013, 35-8-1014, 35-8-1101, 35-8-1205, 35-8-1301, 35-8-1302, 35-8-1303, 35-8-1304, 35-8-1305,
35-8-1306, and 35-8-1307, MCA, are repealed.

NEW SECTION. Section 86. Codification instruction. [Sections 8, 10, 11, 17, 25, 26, 29, 31, 32, 35,
39 through 41, 46, 49, 52 through 62, 64 through 68, 70, 74, 75, and 77 through 83] are intended to be codified
as an integral part of Title 35, chapter 8, and the provisions of Title 35, chapter 8, apply to [sections 8, 10, 11, 17,
25, 26, 29, 31, 32, 35, 39 through 41, 46, 49, 52 through 62, 64 through 68, 70, 74, 75, and 77 through 83].

4 - END -